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SUPREME COURT, U.S.

No. 06-1221

IN THE

Supreme Court of the United States

SPRINT/UNITED MANAGEMENT CO.,

Petitioner,

v.

ELLEN MENDELSOHN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 5, 2006
CERTIORARI GRANTED JUNE 11, 2007

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

General Docket
United States Court of Appeals for the 10th Circuit

Lower court information:

District: 1083-2:03-CV-2429-KHV
Ordering Judge: Kathryn H. Vratil, District Judge
Court Reporter: Theresa E. Hallberg, C.S.R.
Date Filed: 8/27/03
Date order/judgment: 2/28/05
Date NOA filed: 3/29/05

Fee status: paid

Prior cases:
None

Current cases:
None

Docket as of June 18, 2007 8:03 pm

Proceedings include all events.

05-3150 Mendelsohn v. Sprint/United Mgmt.

Appendix A

ELLEN J. MENDELSOHN
Plaintiff - Appellant

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Appendix A

v.

SPRINT/UNITED MANAGEMENT COMPANY
Defendant - Appellee

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Appendix A

05-3150 Mendelsohn v. Sprint/United Mgmt.

ELLEN J. MENDELSOHN,

Plaintiff - Appellant,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant - Appellee.

11/1/06 — Opinion and judgment of the United States Court of Appeals for the Tenth Circuit.

11/15/05 — Defendant's petition for rehearing *en banc* filed.

11/20/06 — Order of the United States Court of Appeals for the Tenth Circuit denying Defendant's petition for rehearing *en banc*.

3/13/07 — Defendant's petition for a writ of *certiorari* filed.

6/11/07 — Order of the United States Supreme Court granting Defendant's petition for a writ of *certiorari*.

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

U.S. District Court
District of Kansas (Kansas City)
CIVIL DOCKET FOR CASE #: 2:03-cv-02429-KHV

Mendelsohn v. Sprint/United Management Company
Assigned to: District Judge Kathryn H. Vratil
Demand: $75,000
Case in other court: 10CCA, 05-03150
Cause: 29:621 Job Discrimination (Age)

Date Filed: 08/27/2003
Date Terminated: 01/30/2007
Jury Demand: Plaintiff
Nature of Suit: 442
Civil Rights: Jobs
Jurisdiction: Federal Question

8/27/03 — Plaintiff's complaint filed in the United States District Court for the District of Kansas.

10/10/03 — Defendant's answer filed.

7/22/04 — Defendant's motion for summary judgment filed.

11/29/04 — Order entered overruling Defendant's motion for summary judgment.

12/15/04 — Defendant's motion *in limine* filed.

Appendix B

1/3/05 — Minute order entered granting Defendant's motion *in limine*.

1/13/05 — Jury verdict in favor of Defendant.

1/13/05 — Judgment of District Court entered.

1/28/05 — Plaintiff's motion for a new trial filed.

2/28/05 — Order entered overruling Plaintiff's motion for a new trial.

3/29/05 — Plaintiff's notice of appeal filed.

APPENDIX C — COMPLAINT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS FILED AUGUST 27, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

JURY TRIAL DEMANDED

ELLEN J. MENDELSOHN
2712 West 141st Street
Leawood, KS 66224

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY
6500 Sprint Parkway
Overland Park, KS 66251

(SERVE: Corporation Service Company
Registered Agent
200 SW 30th Street
Topeka, KS 66611)

Defendant.

Appendix C

COMPLAINT

Parties, General Allegations, Jurisdiction and Venue

1. Plaintiff, Ellen J. Mendelsohn is an individual residing in Leawood, Kansas 66224.

2. Defendant Sprint/United Management Company, (hereinafter "Sprint") is a Kansas corporation, duly organized and existing under the laws of the state of Kansas, and maintains an office for the conduct of its ordinary and customary business in Overland Park, Kansas, at 6500 Sprint Parkway. Defendant Sprint is therefore doing business in this judicial district.

3. Defendant, at all times relevant hereto, is and has been an "employer" within the meaning of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, 29 U.S.C. § 630 (b) ("ADEA").

4. Defendant employs (and at times relevant hereto employed) more than 500 employees.

5. Both jurisdiction and venue are proper in this Court, because federal questions are involved, and because the unlawful employment practices and all other transactions were committed within this judicial district. Venue is therefore proper in this Court, pursuant to the provisions of Section 7 of the Age Discrimination In Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621, *et seq.*, 28 U.S.C. § 1331 (federal question) and § 1391 (b)(c) (venue).

6. This Court has jurisdiction of this cause of action, pursuant to Section 7 of the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621, *et seq.* and 28 U.S.C. § 1331 and 1343 (3).

Appendix C

GENERAL ALLEGATIONS

7. Plaintiff hereby incorporates paragraphs 1 through 6 of this Complaint, by reference, as if fully set forth in this Count I.

8. Plaintiff is a female born August 8, 1951. She was employed by Sprint from September 12, 1983 to September 5, 1986. Plaintiff later was rehired by Sprint February 27, 1989. She continued her employment until her termination on November 22, 2002.

9. Prior to November 14, 2002, plaintiff held the position of Manager III in defendant's Business Development Strategy Group – Mobile Financial Services, Job Grade 79. On November 14, 2002 defendant notified plaintiff she was terminated effective November 22, 2002 as a result of a reduction-in-force (RIF).

10. During plaintiff's employment with Sprint, plaintiff performed her job duties in a satisfactory (or better) manner.

11. On or about April 14, 2003 plaintiff filed a charge of age discrimination with the Equal Employment Opportunity Commission ("EEOC"). Said charge of discrimination were assigned Charge No. 281-2003-01746. The EEOC investigated plaintiff's charge of discrimination and issued plaintiff her Notice of Right to Sue on or about June 12, 2003, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by reference.

12. This action has been commenced by the filing of this Complaint within ninety (90) days after plaintiff's receipt of the aforesaid Notice of Right to Sue; therefore, plaintiff has duly met all administrative requirements of the ADEA.

Appendix C

13. At the time of defendant's unlawful conduct toward plaintiff, and thereafter, defendant Sprint has retained and continues to employ younger individuals, in jobs for which plaintiff is and was qualified.

14. In last August, 2003, approximately 2 1/2 months prior to plaintiff's termination, a younger male, Chris Bierbaum, was transferred into her group as a Manager, Grade 78.

15. At the time of plaintiff's termination in November, 2002, there were four (4) groups within defendant's Business Development & Strategy department called Incubator Groups. There were three (3) other managers within plaintiff's group besides plaintiff. All three (3) of the other managers were under the age of 40. Plaintiff was the oldest manager in her group.

16. In the other three (3) groups within defendant's Incubator Groups, there were twelve (12) other managers in jobs which plaintiff was qualified to perform by education and experience. All twelve mangers were younger than plaintiff. All kept jobs within Sprint. No other basis than age discrimination would explain why plaintiff, the oldest manager in the entire Incubator Groups, was the *only* manager terminated as a result of the so-called reduction-in-force.

17. Immediately *after* plaintiff's termination on November 22, 2003, two younger individuals under the age of 40, Whitney Siavelis and Dan McCauley, were transferred *into* plaintiff's group in Manager positions, Grade 78. Siavelis had been assigned "special assignment" which within Sprint means you will no longer have a job once the "special assignment" is completed. It is well-known at Sprint that "special assignment" ordinarily is the "kiss of death." McCauley was transferred from

another department within the Business Development & Strategy Department into plaintiff's group. However, in this case, plaintiff was terminated and these two younger individuals were transferred into her group as Managers.

18. The project plaintiff was working on with the others in her group continued on after plaintiff's termination. In fact, in plaintiff's one-on-one and six month performance discussions with her supervisor's before her termination, plaintiff was told that the project she was working on was "the most important project within the group."

19. Plaintiff has observed a pattern and practice of Sprint laying off, and not finding jobs for, well-performing employees in their late 40's, early 50's, and older. Instead, Sprint has separated or demoted employees in the protected age group, whereas for younger employees Sprint finds alternative jobs if the current jobs of younger employees are restructured or eliminated.

COUNT I—AGE DISCRIMINATION

20. Plaintiff hereby incorporates by reference each and every allegation and averment in paragraphs 1 through 19 above as though fully set forth herein.

21. Defendant Sprint discriminated against plaintiff on the basis of her age in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et. seq.*

22. Defendant Sprint, by and through its officers, employees and agents, engaged in a continuing pattern and practice of discrimination against or disparate treatment of plaintiff based upon plaintiff's age, in terminating plaintiff.

Appendix C

23. As a direct and proximate result of defendant's continuing pattern and practice of discrimination directed toward Plaintiff, or of the disparate treatment of plaintiff, plaintiff suffered actual damages in the form of lost wages, lost fringe benefits, loss of earning capacity, and in other respects, all in an amount yet to be determined, but not less than Seventy-Five Thousand Dollars ($75,000.00).

24. Defendant Sprint's actions were willful, entitling plaintiff to liquidated damages in an amount equal to the actual damages referred to in the preceding paragraph.

25. Plaintiff has already incurred and will in the future incur substantial attorney's fees and expenses in prosecuting her claim of discrimination.

WHEREFORE, plaintiff respectfully prays judgment in her favor and against defendant Sprint/United Management Company after jury trial: (1) awarding her back pay in an amount yet to be determined; (2) awarding her liquidated damages in an amount equal to her actual damages; (3) reinstating plaintiff to her Manager's position or its equivalent, with any promotions and pay increases she would have received in the interim; (4) in the alternative to reinstatement, awarding her front pay in an amount yet to be determined; (5) awarding her past and future lost fringe benefits in an amount yet to be determined; (6) permanently restraining defendant from ever again discriminating against plaintiff or any other individual on the basis of that individual's age; (7) awarding her the costs and expenses, including attorney's and expert witness fees, incurred in prosecuting her claims of discrimination; and (8) awarding such other and further relief as the Court deems just and proper.

Appendix C

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ATTORNEYS FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues so triable as a matter of right.

/s/ Dennis E. Egan

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Kansas as the place where this case should be tried.

/s/ Dennis E. Egan

Appendix C

EXHIBIT A

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Ellen J. Mendelsohn
2712 West 141st Street
Leawood, KS 66224

From: Kansas City Area Office
Gateway Tower II
400 State Avenue
Kansas City, KS 66101

EEOC Charge No. *281-2003-01746*
EEOC Representative *Lawrence S. Warren, JR, Investigator*
Telephone No. *(913) 551-6641*

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

* * *

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

* * *

On behalf of the Commission
s/ George Dixon — 6-12-03
George Dixon, Director — *(Date Mailed)*

APPENDIX D — EXCERPTS FROM DEPOSITION OF JOHN BOREL DATED APRIL 19, 2004

ELLEN J. MENDELSOHN vs.

SPRINT/UNITED MANAGEMENT COMPANY

DEPOSITION OF JOHN BOREL

APRIL 19, 2004

[Commencing at page 5]

* * *

Q. What's your date of birth?

A. 14 September 1947.

Q. So you're currently 56 years old; is that correct?

A. I am.

* * *

[10] * * *

Q. When did you first begin working at Sprint?

A. 6 November 2000.

* * *

Appendix D

[12] * * *

Q. What was your title when you were first employed by Sprint?

A. I was Project Manager 3.

Q. While you were employed at Sprint, did you have any job titles other than Project Manager 3?

A. No.

Q. Do you recall what your job grade was as a Project Manager 3?

A. Yes, I did.

Q. What was that?

A. Well, in the project management area, there were certain things that I was supposed to be able to do at that level and as you go higher, those duties increase in complexity, that kind of thing.

* * *

Appendix D

[19] * * *

Q. . . . Prior to your termination of employment, had you applied for any [20] other position at Sprint between the time of your — strike that, I'm struggling, I apologize. While you were employed at Sprint, did you apply for any other role?

A. Only during my transition process after I was laid off.

Q. While you were employed by Sprint, did anybody ever tell you you could not apply for employment for other positions at Sprint?

A. I wasn't allowed to for a while, but they changed their mind.

Q. When were you not allowed to apply for other positions at Sprint?

A. Well, a week prior to me being laid off, I went to talk to Jay Cole who was the manager within our directorate who had a vacant PM position. He was wanting me to take that job and work with him and as — after I got laid off, I put in for that position and he had told me that I was not allowed to put in for this because I had been banned and that I had an adverse rating in my file.

Q. Do you remember the day that you spoke to Jay Cole?

A. It was about a week before I got laid [21] off. I got laid off on the 26th of February, 2003, so a week prior to that I guess, that time frame.

Appendix D

Q. Somewhere around February 19th of '03; is that correct?

A. I don't remember that exact date, but it was a weekday, it was not a weekend. I don't remember the date.

Q. Was the position that Jay Cole had available one that had been filed by somebody else or was it a new position, do you know?

A. It was filled by someone else.

Q. Who was that?

A. Project Manager 4, Martina Howell.

Q. And had Martina left the company at that time?

A. She had.

Q. Where did she go, do you know?

A. She went to take a job in South Africa with a telecommunications firm.

Q. When had Martina Howell left Sprint?

A. It was probably sometime in late January, early February. I don't know exactly when. I just know that she left probably a month before I got laid off.

Appendix D

[22] * * *

Q. Was anybody else with you when you spoke with Jay Cole about a vacant position?

A. No. He and I sat down, we went to a conference room and we talked about the position. He told me he thought I would be a very good fit for the job and that he wanted me on his team. I said, well, I would sure like to make the transition and he said he would talk to Mohammad Hussain about it.

Q. Did you approach your Mr. Cole about the position or did he approach you?

A. I think I approached him and then we set up a time to have me come in and talk to him about it. Not as a formal interview, but just to discuss the position and at that time he wanted me [23] to apply for the job.

Q. Did you apply for the job?

A. Yes, I did.

Q. When was that?

A. That was after I was laid off. I finally got through HR a copy of the JIR, they call it job interest, job information request or interest request, something like that. They sent it to me at my home. I filled it out in an hour or two, sent it right back in order to get my name in for that job.

Q. Did you fill that form out completely?

A. I did.

Q. Did you fill it out truthfully?

A. Yes, I did.

Q. Why did you approach Mr. Cole about this open project manager 4 position?

A. Well, I tell you what, I thought it would be a good position for me to get into. I knew Martina Howell, she had enjoyed it a lot. We were actually going through a big transition and that particular position was going to be the focal point dealing with the contract folks on different projects. So it would have changed my job from monitoring software testing to deal with [24] contracts. And as I understood it, the major programs were coming into the STIC Lab interdirectory and I would really be at a different level, hopefully it would be a promotion in it for me.

* * *

[26] * * *

Q. Did she tell you why she was talking over those duties?

A. Well, she didn't exactly tell me anything. She just did that and I tried to keep on top of things as best I could, but you know, now I guess it's apparent that she was taking over because she was taking over my job to make sure there was a transition between me and somebody else.

Q. Why was that apparent?

A. Well, after the fact, I got laid off. I mean, obviously I don't think she would have taken [27] over my job had she known new I wasn't going to be laid off. You know, a lot of this stuff is — you don't know what's going on at the time, nobody tells you you're going to be laid off, and after it all happened, it sort of made more sense to me what she was doing.

Q. Did she tell you she was taking away responsibilities from you to transition you for a layoff?

A. She did not tell me that, no.

Q. So that's just based upon your belief; is that right?

A. It's based on what happened to me, right.

Q. What's that belief based upon?

A. What happened to me.

Q. What do you mean by what happened to you?

A. I got laid off.

Appendix D

* * * [31]

Q. Back to this meeting you had with Jay Cole on or about February 19th of '03. I'm just using that as an approximate date, okay?

A. Right.

Q. What exactly did Jay Cole tell you in that meeting?

A. Well, we talked about the transition of our directorate. We were completely changing the way we were going to do business in the future. Okay. There was going to be one team that dealt with new programs coming into the directorate and the other three teams were going to be testing teams that would test the programs as they came in and get them out to production as quickly as we could. So it was a little bit different than the [32] way they were previously.

He told me that he liked what he saw when he saw me work for Janet. He also told me that he didn't think Janet gave me the leeway to do my job properly and that he would change that. He would give me more responsibility because he thought I could handle it.

Q. Did he offer you a job during that meeting on February 19th?

A. He didn't offer me a job. He just said that he would like to have me for this position. I told him I would put in for it and I asked him to talk to Mohammad about it.

Appendix D

Q. Do you know who was hired into the position that Jay Cole filled?

A. I just know it was a female, I don't know who. I was not there — I was not — you know, after I got laid off, I wasn't privy to any of that information.

* * *

[33] * * *

Q. When were you told that your employment was being severed by Sprint?

A. 26 February of 2003 about two o'clock in the afternoon.

Q. Was February 26, 2003, your last date worked at Sprint?

A. Yes, it was. They told me and marched me out the door after I worked three-quarters of the day.

* * *

[35] * * *

Q. Who told you that day your employment with the company was being separated?

A. Mohammad Hussain.

Appendix D

Q. Was anybody else with Mohammad when he told you your employment was being separated?

A. No.

Q. Then what did Mohammad tell you when he told you your employment would be separated?

A. He said that they were going through a transition and reorganization and that we were — they were going from four project managers to two and they were getting rid of two, is what they said, what he said.

Q. Do you have any reason to believe Mohammad wasn't telling you the truth at that [36] time?

A. No, I took that as the truth.

Q. Do you still believe Mohammad was being truthful with you when he told you that?

A. Well, I think he was truthful about that, but I don't think he was completely truthful when I asked him why I was being laid off. And I said, Is it based on any performance? He said, No, not at all. He said, Your performance has been great. We're just doing a reorganization and we're eliminating your position.

Appendix D

Q. Did you ask him any questions about his comments that your performance had been great?

A. He said it wasn't based on my performance, it was based on my position being eliminated and, you know, I didn't think I had much recourse to that at the time. I mean, you know, if he said, yeah, you've been a terrible worker, I would have really questioned him, but I didn't think I had any grounds to do that at the time.

* * *

[39] * * *

Q. Do you know if you were compared to other employees at the time of separation of employment?

A. Well, after the fact, I was told that I had been compared to other project managers and I was given an adverse rating after I left, which I didn't think was too fair.

Q. Do you know when the adverse rating was made?

A. I just know it was done after I was laid off and that Sprint had never given me a copy of it even though I've asked for it.

[40] Q. How do you know that the rating was given after you were laid off?

A. Well, I called HR, I asked if they had an adverse rating on me and they said, yes. So I mean, I assume it was done after I left because I never saw one when I was there.

Q. It's possible it could have been actually given — strike that. It's possible it could have been assigned to you before your separation of employment, you just had never received it; is that right?

A. I don't think so. In fact, Janet Mathus told me she was directed by Mohammad Hussain to give me an adverse rating. So I mean, I know it was directed and it wasn't given to me before I got laid off, so it must have been after that time.

Q. Why is it that you think that it must have been after that time?

A. Because we had a review of my 2003 performance at the end of the year and there was no mention of anything wrong with my performance. And if I was to have an adverse rating, then I would have thought she would have told me about it.

[41] Q. Do you know what the performance ratings were for the other three project managers in the certification directorate team?

A. I have no idea, but I was told that I was compared to one project manager that had already left the company. I didn't think that was too fair since she was a higher grade than I was in the first place. Very sharp gal. So I mean, I don't know what anybody else got.

* * *

Appendix D

[42] * * *

Q. So you did receive a rating in 2003 for your performance in 2002?

A. My initial — that's the first rating I ever received, then 2003 — I'm sorry, I'm getting my dates mixed up here. I did talk to Janet in December of 2002 and we had our final — we had a talk every quarter about the performance and I would identify my objectives and she would identify, you know, how she felt about my performance. That was done just prior to my leaving the company, and there was no talk about any adverse performance. In fact, when I spoke to her on the phone, she said my performance was not adverse at all and that she was forced to give me that rating.

Q. Did she tell you why she was forced to give you that rating?

A. She just told me that Mohammad Hussain directed her to rate me adversely. That's all she said.

Q. When was that phone conversation with Janet where she told you Mohammad had directed her [43] to give you a poor rating?

A. It was after I called Jay Cole to find out how I was doing for his job and he informed me that I was not being considered for his job, I was banned from the interview process because I had an adverse rating. That's the first I ever knew about it.

* * *

Appendix D

[75] * * *

Q. Mr. Borel, did you ever witness anyone being harassed at Sprint because of their age?

A. Well, yes, I have.

Q. Who was that?

A. Carol Kipps.

Q. How do you spell that?

A. K-I-P-P-S I think is the way to spell it. She was on the Tacordia team, Pat Baxter's team.

Q. Is that part of the certification directorate team?

A. Yes. The certification was made up of four teams, Janet Mathus, Pat Baxter's, Kim Dang [76] and Jay Cole's. So there are four teams under Mohammad Hussain.

Q. Did you witness anybody other than Carol Kipps being harassed because of their age?

A. I have no direct knowledge of that other than hearsay. It's probably just what you hear during like the ion reductions about the older folks going.

Q. Carol Kipps, how was she harassed because of her age while she was employed at Sprint?

Appendix D

A. Well, I actually talked to Carol after I got laid off and she said she was on medical leave and she had back problems, she came back to work and they laid her off when she got back.

Q. When was she laid off?

A. Prior to May. I don't know when.

* * *

[77] * * *

Q. How was Carol Kipps discriminated — strike that. How was Carol Kipps harassed because of her age?

A. Well, you know, I don't know any details. I just know that she had told me that, you know, when she got off her medical leave she got laid off the day she got back. And you know, I had heard rumors that she had given her an adverse evaluation and she confirmed that.

* * *

[78] * * *

Q. Did Ms. Kipps tell you she thought she had been terminated because of her age?

A. Yes.

Q. Did she tell you why she believed that?

A. She said she had 15 years with Sprint and she was doing a great job and she didn't know of any other reason she would be terminated. That's what she told me.

Q. Did Ms. Kipps tell you what her performance evaluation had been for 2002 performance year?

A. I don't think we talked about a specific year. She just said she — her performance was very good.

* * *

[79] * * *

Q. After that time have you talked with anybody at HR at Sprint about what you believe is age discrimination?

A. Well, I might have made a comment to — I remember her name now, Rene Latta, after I got my adverse evaluation, which I found out about after I got terminated. I was not happy. I was trying to find out from her where that evaluation was, if I could get a copy of it. I told her I thought that this is age discrimination because there's no reason for me to have been given an adverse rating.

* * *

Appendix D

[80] * * *

Q. I wasn't very clear in my question, I wanted to make sure we were on the same page. In your conversation with Renee Latta was the only time you had raised the concept of age discrimination with anyone at Sprint?

A. Yes, it was. I mean, I had no reason to think otherwise until I found out the real reason I was terminated.

Q. What do you believe the real reason was that you were terminated?

[81] A. Well, what I was told is that it was because my job was eliminated, but why would they give me an adverse rating if my job was eliminated if I'd done a good job. I think there had to be something else.

* * *

[89] * * *

When did you first contact the EEOC?

A. I can't give you a date. I just know it was within six months I think after my termination.

Q. All the information you gave to the EEOC, was that truthful?

A. Whatever I've given has been truthful.

Appendix D

Q. Are you aware of other individuals at Sprint who have raised claims alleging age discrimination?

A. I know there are a lot of people that have. I don't know specifically names other than Carol Kipps.

Q. Anyone else?

A. Well, I know there's a number of them involved in this class action.

* * *

[90] * * *

Q. Mr. Borel, you've been identified as a witness who has knowledge of allegations of widespread age discrimination at Sprint. Were you aware of that?

A. I know I was identified, yes.

Q. What is the widespread age discrimination at Sprint that you're aware of?

A. Well, personally dealing with myself and Carol Kipps, I mean, I've heard about other folks, but I don't know their details.

* * *

Appendix D

[91] * * *

Q. Were you aware that you were identified as an individual who has knowledge of Sprint's treatment and opinions toward its older employees?

A. I believe so.

Q. What is your knowledge about Sprint's treatment and opinions towards older employees?

A. Well, talking about me personally, Carol Kipps, those are the only two situations, Darryl Miller I guess since he was involved, but it's a little different with Darryl. I was told that he had integrity situation which he did not know of, so there's something funny with Darryl as well.

[92] Q. So there's something funny with Darryl and Carol Kipps told you she thought she had been subjected to age discrimination and you have your own beliefs about being discriminated against; is that right?

A. Yes, I do.

Q. Are you aware of anything else regarding Sprint's treatments of its older employees?

A. Not that I have personal knowledge of, no.

Q. Anything that's hearsay?

A. Yeah, there are a lot of people that feel that way.

Q. How are you aware of that?

A. From hearsay.

Q. From whom did you hear that from?

A. I mean, after I got laid off, you know, trying to talk around a little bit, and there are a lot of people that seemed to be released that have been over 50.

* * *

[93] * * *

Q. (By Mr. Hulla) Lastly you've been identified as an individual who has knowledge of transferring and hiring of younger individuals in full-time positions that older individuals are qualified to perform?

A. That's correct.

Q. Other than you own personal circumstances, Darryl Miller's and Carol Kipps', [94] are you aware of other individuals?

A. No. Just my situation where Deanna Patton was moved in to take over my job after I left.

Appendix D

Q. What's Deanna's age?

A. I don't know what her age is. She is probably — I don't know what her age is. I mean, like I said before, we didn't talk about ages of people. She could be in her thirties, she could be 40 for all I know.

Q. You say she assumed your responsibilities?

A. After the fact I found out she did.

Q. And do you know what Deanna Patton's performance ratings were for 2002?

A. Well, all I know is that she was displaced from a team that got laid off and she was put in a position that later took my job. So I don't have any idea about performance ratings.

* * *

[95] * * *

Q. Okay. And do you think any of Sprint's practices are discriminatory against individuals because of their age?

A. Well, as far as I'm concerned, the practice of what I went through about being told that you're being laid off because your job was being abolished and then find out later that you've got an adverse rating that prohibits you from working any place in Sprint or interviewing for a job, I think that's discriminatory.

Appendix D

[96] Q. That's because of your age?

A. I think so.

Q. Why do you think so?

A. Because I'm a damn good project manager. And I think I could do the job of anybody in that STIC Lab, you know, and I don't think there's a reason why I should have been terminated.

Q. Mr. Borel, you filed your own lawsuit against Sprint; is that correct?

A. Yes, I did.

Q. And in that lawsuit you allege you were discriminated against because of your age; is that right?

A. That's right.

* * * *

APPENDIX E — EXCERPTS FROM DEPOSITION OF YVONNE WOOD DATED APRIL 23, 2004

ELLEN J. MENDELSOHN vs.

SPRINT/UNITED MANAGEMENT COMPANY

DEPOSITION OF YVONNE WOOD

APRIL 22, 2004

[Commencing at page 5]

* * *

Q. What is your date of birth?

A. November 7, 1951.

Q. As we sit here today you are fifty-two years old; is that correct?

A. Yes.

* * *

[8] Q. When did you begin working at Sprint?

A. November 4th, 1996.

* * *

Appendix E

[19] * * *

Q. Do you know, did you work for a [20] particular division of Sprint such as the LTD, PCS or GMG organization?

A. PCS.

Q. While you were employed at Sprint did you work at any other business unit other than Sprint PCS?

A. When we got purchased I guess I worked for Sprint.

Q. But you continued to work under the name of PCS after the time of the purchase?

A. Yes. It was known as a different organization when I first started, but I'm not sure what it was anymore.

Q. At some point in time it was incorporated into Sprint Corporation as far as you know; is that correct?

A. That's correct.

Q. You continued to be identified with the PCS part of Sprint organization; is that correct?

A. That's correct.

Q. Did you ever work for any part of the Sprint organization other than PCS?

A. I'm not sure if when they bought us if it was considered — they were moving things together and things were kind of chaotic.

[21] Q. Other than the point in time that you were bought, do you remember having worked for any part of Sprint other than PCS?

A. No.

Q. How long did you work in the role as a database analyst II?

A. Maybe six months, a year.

Q. What was your role after you were database analyst II?

A. Database analyst — no, data analyst III.

Q. When were you given the title data analyst III?

A. Approximately 1998, maybe 1999, at the latest.

Q. Was it a promotion from database analyst II to data analyst III?

A. Yes. And it was data analyst II, I believe.

Appendix E

Q. While you were employed by Sprint, did you receive any promotions other than your promotion from a data analyst II to data analyst III?

A. No.

* * *

[22] * * *

Q. What was your job grade as a data analyst III?

A. 77.

Q. Was your job grade while you were employed at Sprint ever higher than a 77?

A. No.

* * *

[39] * * *

Q. When were you told of your separation of employment at Sprint?

A. January 15th.

Q. What year was that?

A. 2003.

Appendix E

Q. Were you required to come into the office and do any work after January 15th?

A. No.

Q. Who told you that your employment with Sprint was being separated?

A. I actually knew it was happening the day before, but it wasn't official.

Q. How did you know that?

A. Someone leaked it to me.

Q. How did they leak it to you?

[40] A. They told me that I was going to be laid off the next day.

Q. Who was it that told you?

A. My supervisor.

Q. Roberta King?

A. Yes.

Q. Who told you on January 15th, 2003 that you were going to be separated from employment at Sprint?

A. Ted Stock. Ted Stock also told me on the 14th.

* * *

Appendix E

[42] * * *

Q. At any time on January 14th did you tell [43] Roberta King you thought your separation from employment was because of your age?

A. I didn't say that, but — I didn't vocalize that.

Q. But on January 14th you thought that was the reason?

A. I thought it was a combination of factors: my disability, the fact that I was a woman, and my age.

* * *

[47] * * *

Q. Do you know what factors were considered [48] at the time management decided who to separate?

A. There was never a formal announcement that said specifically what factors were to be considered.

Q. Do you know what factors were considered?

A. I can only make assumptions.

Q. What would those assumptions be based upon?

A. Age, race, sex, disability.

Appendix E

Q. Earlier you had indicated age, sex, and disability, now you also believe it included your race?

A. Not mine. Others.

Q. Why is it that you believe age, race, sex and disability were factors considered as far as who was to be part of a reduction in force in your group?

A. That's a complicated question.

Q. Why is it?

A. I had a copy of a spreadsheet I had received from one of the supervisors accidentally. This spreadsheet indicated age, race, and sex.

Q. Who was the supervisor that you received that from?

A. Dan Kennedy.

[49] Q. Who did Dan report to?

A. Ted Stock.

Q. Do you know if those factors were considered by Mr. Kennedy when he made termination decisions?

A. Yes.

Q. Why is that?

A. Because I have the spreadsheet.

Q. Do you know if he referred to the spreadsheet when he made those decisions?

A. I would believe so.

Q. Do you know when that spreadsheet was created?

A. March of 2002.

Q. Do you know who it was created by?

A. There was a name on the spreadsheet, I think it was Dean Hart.

Q. Do you know who Mr. Dean Hart is?

A. No.

Q. Do you know if Mr. Dean Hart populated the spreadsheet that you received?

A. I believe it was populated by a database.

Q. In order to populate it from a database you would have to enter some information on the spreadsheet; is that right?

[50] A. Yes.

Q. Do you know who entered that information onto the spreadsheet to populate it from the database?

A. I didn't actually see them doing it so I can't say.

Q. Do you know when the information was added to the spreadsheet to pull information from the database?

A. I don't know how often it was used.

Q. Do you know when it was?

A. I know that there were people's names on it and that it was accidentally sent to me, that's what I know.

Q. Do you know if the RIF selection sheet was prepared before or after the decisions were made as to whose employment would be separated as part of the RIF?

A. Before.

Q. How do you know that?

A. Because the people's names who were on the sheet, some of the people were no longer employed there, and their names were highlighted in pink or red as to going to be let go.

Q. Do you know the date on which the [51] information was added to the spreadsheet?

A. Not specifically.

Q. So it could have been after the decisions were made as to who was selected for the RIF; is that right?

A. It was before, because they weren't let go until after I had seen the spreadsheet, the ones on that specific round.

Q. But do you know when the decisions were made to terminate individuals' employment?

A. No, I do not.

Q. You don't know what date that spreadsheet was populated; is that correct?

A. Correct.

Q. You're assuming that the spreadsheet was created before the decisions were made?

A. I know the spreadsheet was created before the decisions were made.

Q. How is it that you know?

A. Because I received it in an e-mail and it had the people's names on it, some of the people's names on it.

* * *

Appendix E

[71] * * *

Q. Ms. Wood, while you were employed by Sprint did you ever witness anything that you would consider to be harassment because of an employee's age?

A. Yes.

Q. What was that?

A. I was told as opposed to witness, that Ted Stock had said that Sharon Miller's group was a bunch of old, sick people, basically.

Q. Was there anything that you witnessed that you believe constituted harassment because of employees' ages?

[72] A. Yes.

Q. What was that?

A. They brought in an intern and he was going to be doing my job. They brought him in just before Mark Kragen was laid off.

Q. Anything else?

A. They sent him to DC to be trained for my job and would not give me training.

Q. Is there anything else that you witnessed that you believe constituted harassment because of employees' ages?

A. Offhand, I can't think of anything right now.

Q. Who was the intern who was brought in, as you say, to do your job?

A. Cory House.

Q. Was his assignment temporary; do you know?

A. Yes, but Maureen had told me that they were going to try to bring him on permanently to do my job, if he wanted to do it.

Q. Do you know if he was ever brought on permanently to do your job?

A. He didn't want to do it.

Q. How do you know that?

[73] A. He told me. He hated it.

Q. Do you know if a job offer was ever made to Cory House?

A. Not in — I don't know. I know he was still working at Sprint when I left.

Q. Do you know if he is still working at Sprint now?

A. I have no idea.

Q. Do you know the terms for his internship to at Sprint?

A. No, I do not. They referred to him as one of Jerry's kids, though.

Q. Why was that?

A. Because he was brought in under some program that Jerry Batt had initiated.

Q. What program is that?

A. I don't know the name of it.

Q. Do you know who else participated in that program?

A. No, I don't.

Q. Do you know the ages of the people who participated in that program?

A. My understanding is that they were interns and young, fresh out of college, pretty much.

[74] Q. Do you know what their ages were?

A. No.

Q. I believe you said Cory House was given training that you had not been given; is that correct?

A. Correct.

Q. What kind of training was that?

A. Case tool training for the latest version of the tool.

Q. You didn't want to do case tool training; is that right?

A. No, I did not. But I did want training if I had to stay in the position.

Q. About a month before your separation you were released of your case tool administrative work; is that right?

A. No, actually I was doing both positions, both case tool and working with data in-house.

Q. You were never released of your case tool administrative work?

A. No.

Q. Do you know if the training that was given to Cory House was part of the terms of his internship at Sprint?

A. No, I do not.

[75] Q. Do you know who continued to do the case tool administrative work following your separation of employment?

A. I heard it was done by committee.

Q. Do you know who was on that committee?

A. No, I don't.

Q. I believe you indicated that you had been told that Ted Stock had made a comment to the effect that Sharon Miller's group was a bunch of old, sick people; is that correct?

A. Yes.

Q. When were you told that?

A. It was around the time I was having physical therapy and I believe it was — I believe around 2001.

Q. And you were reporting to Sharon Miller at the time?

A. Yes.

Q. Do you recall why Sharon Miller told you that?

A. Because I think it was relevant to the fact that I had had to have the physical therapy and take time off from work in order to go do that. And I think that was — may have been his reaction to the news.

[76] Q. Do you know for sure if that was what his intention was when he made that comment?

A. No, I don't.

Q. Do you know if Sharon Miller told anyone else that Ted Stock had made a comment to the effect that her group was a bunch old and sick people?

A. I know she told Carolyn Selberg.

Q. How do you know that?

A. Carolyn told me.

Q. Did Sharon Miller tell you when Ted Stock made this comment?

A. It was around the time she told me.

Q. Did Sharon Miller tell you if anybody else overheard Ted Stock's comments about Sharon Miller's group being a bunch of old, sick people?

A. No, she didn't tell me.

[77] * * *

Q. Ms. Wood, earlier you testified that you had received a worksheet from a man named Dan Kennedy; is that correct?

A. That's correct.

Q. When did you receive that worksheet?

A. Approximately January 6th, 2003.

Q. Did you ever ask Dan Kennedy why he sent you that worksheet?

A. He came in and told me he sent it to me by accident.

Q. Did Dan tell you anything else about the worksheet that he sent you on January 6th?

A. I believe he said it was for Tom Woodard.

Q. What was Tom Woodard's position at the company?

A. He was another manager, supervisor in our group.

Q. Did he say why he was sending it to Mr. Woodard?

A. No.

Q. Can you describe for me exactly what was [78] on the spreadsheet that Mr. Kennedy sent to you on January 6th?

A. There were several people's names, comments about the people, their address, phone number, Social Security number. There were places on the spreadsheet for age, race, and sex, meaning birth date, education, places for the people's ratings for previous years, things like that.

Q. Again, Dan Kennedy never told you what the purpose of that spreadsheet was; is that correct?

A. He did not tell me.

Q. Did you ever ask anybody at Sprint what the purpose of that spreadsheet was?

A. I believe it is titled something about layoffs and RIFs, or something like that, so it was pretty obvious.

* * *

[104] * * *

Q. Are you aware that other individuals at Sprint have raised complaints of age discrimination?

A. Yes.

Q. How are you aware of that?

A. There was a lot of grumbling when I was there, and I also know that through litigation, I've been made aware of that.

Q. Who were you aware of that made complaints of age discrimination?

A. The litigants.

Q. Who are they?

A. I don't know all of them. I know Ms. Mendelsohn.

[105] Q. Anyone else?

A. Sharon Miller.

Q. Anyone else?

A. I think Shirley Williams.

Q. Anyone else?

A. I know that people have signed on to be in the lawsuit, too.

Q. Do you know who those people are?

A. Not all of them.

Q. When you say lawsuit, are you talking about a lawsuit that you filed against Sprint alleging age discrimination?

A. Myself and others.

* * *

[109] * * *

Q. How about Sharon Miller; how are you aware that she had raised complaints of age discrimination?

[110] A. She told me.

Q. When did you and Sharon Miller talk about her complaints of age discrimination?

A. I don't recall the exact time. It was after she was laid off.

Q. When was she laid off?

A. I don't know exactly.

Q. That was after you; is that right?

A. I don't know.

Q. What did you and Sharon Miller talk about with regard to her complaints of age discrimination?

A. Just that we felt we had been discriminated against.

* * *

[112] * * *

Q. Was anything else at Sprint, other than your separation of employment, the product of age discrimination?

A. I think it was a collection of things, a combination.

Q. I'm probably not asking the question very clear. In your lawsuit you allege you were discriminated against because of your age; is that correct?

A. Yes.

Q. Why is it you were discriminated against because of your age?

A. Because there were people who were younger than I, with less education, retained by Sprint when I was let go.

Q. Who were those people?

A. There were numerous people.

Q. Who are they?

A. I know Sharna Bean.

Q. What was her last name?

A. Bean. B-E-A-N. Marita Johnson, Cindy [113] Johnson, Chris Reille. There were a lot of people left.

Q. Anyone else?

A. Not that I can remember at this time, the names. I know there were, though.

Q. Do you know what Sharna Bean's performance rating was for the 2002 performance year?

A. No, I have no idea.

Q. Do you know how any of the employees who were left behind were rated?

A. No idea.

Q. When I say left behind, those individuals who were not separated; is that what you understood?

A. That is what I understood.

Appendix E

Q. Anything other than the fact that younger employees retained their employment after the RIF that led you to believe that your termination from employment was discriminatory?

A. Ted Stock's comment, of course.

Q. That was at some point in 2001; is that right?

A. I believe so.

* * *

[115] * * *

Q. Is there any reason, other than the fact that you think younger males were promoted, that forms a basis for your belief that you were not promoted because of your age?

A. The intern program where they brought in all the young kids. They were supposed to be on the management fast track.

Q. Who were they?

[116] A. I know of Cory House for certain, but I don't know other names.

Q. Cory House's position was temporary, right, temporary internship?

A. In my group, supposedly.

Appendix E

Q. Why do you say supposedly?

A. Because they had told him that he — if he wanted to, he could have my job.

Q. Were you aware of anybody else who was in an intern program who was under the age of forty?

A. I knew that there were supposedly a fairly large group of people brought in for this, the Jerry's kid thing.

* * * *

APPENDIX F — EXCERPTS FROM DEPOSITION OF SHARON MILLER DATED APRIL 23, 2004

ELLEN J. MENDELSOHN vs.

SPRINT/UNITED MANAGEMENT COMPANY

DEPOSITION OF SHARON MILLER

APRIL 23, 2004

[Commencing at page 6]

* * *

Q. What is your date of birth, Ms. Miller?

A. April 22nd, 1950.

Q. So you're 54 and one day old?

A. Yes.

* * *

[8] * * *

Q. Mrs. Miller, when did you first become employed by Sprint?

A. March 1st of 1990.

Q. And what was your position at the time you were hired by Sprint on March 1st of 1990?

A. I was a senior analyst, senior quality [9] analyst.

Appendix F

Q. For how long a period of time were you a senior analyst — strike that. How long time were you a senior quality analyst at Sprint?

A. For about not quite a year.

Q. Were you promoted from your senior quality analyst position?

A. Yes, I was.

Q. What position were you promoted to?

A. Manager.

Q. How long were you in your manager position?

A. For the duration of that term with Sprint until October of 1993.

Q. So you were employed by Sprint from March 1st of 1990 to October of 1993; is that correct?

A. Correct.

Q. Why did your employment terminate in October of 1993?

A. I chose to leave full-time employment to home-school my youngest son and do part-time work instead.

Q. So it was your decision to terminate your employment in October of 1993?

A. Yes. There actually was a layoff action [10] at that time and I volunteered into that.

Q. Did you receive severance as a result of volunteering to take layoff in October of 1993?

A. Yes, I did.

Q. When did you begin working again after October of 1993?

A. I actually continued working part time on contract to Sprint. That started I believe in — actually in December, very shortly after I had left.

Q. So you took — there was about two months between the time that you separated your employment in October 1993 and when you began a part-time position as a contractor for Sprint?

A. About that, yes.

Q. And in December of — strike that. In December of 1993 when you were working for Sprint as a contractor, were you working through a contracting agency?

A. No, I was working as an independent contractor.

Appendix F

Q. Did you send invoices to Sprint directly or did somebody send them to Sprint on your behalf?

A. I sent them.

[11] Q. How long did you work in your part-time capacity as a contractor for Sprint?

A. Until April of 1996.

Q. Where did you work as of April of 1996?

A. Trying to recall. I did some additional part-time work independently as a contractor for Universal Underwriters that overlapped actually with my Sprint contracting.

Q. You began providing services to Universal Underwriters in April of 1996?

A. Actually, I began providing services to them in about January of that year, I was doing both.

* * *

[18] * * *

Q. And while you were a consultant managing projects at Sprint for Ultreya, were you providing services to a particular business unit or division of Sprint?

A. Sprint PCS.

Appendix F

Q. Did you ever provide services as a consultant for Ultreya to any other business unit other than PCS?

A. No.

Q. And how much money were you making as a consultant for Ultreya?

A. My rate varied during that three-year period of time from $75 an hour to $90 an hour.

Q. When you say "rate," is that what you charged Ultreya for your services?

A. That's what Ultreya paid me, yes.

Q. You were paid by the hour by Ultreya?

A. That's correct.

Q. When did you begin working at Sprint as an employee again after Ultreya?

A. In October of 2002. I believe it was effective the first of October.

* * *

Appendix F

[20] * * *

Q. Why did you list Ted Stock as a reference in your employment application?

A. He was the director that I was working for when I was brought in as a consultant.

Q. Did you expect Mr. Stock to give positive feedback regarding your performance as a consultant?

A. Yes, I did.

* * *

[25] * * *

Q. Why were you not comfortable accepting a position in the data management department?

A. I felt that the scope was a little more narrow than what I like to do and kind of didn't want to be slotted into that narrow of a job.

Q. Any other reason why you didn't feel comfortable taking the position in the data management department?

A. I was not totally comfortable with Mr. Stock's approach to management.

Q. Why is that?

A. I didn't feel that he was always fair with people.

Q. Why is that?

A. Just actions that he had taken and I'd observed and comments that he had made.

Q. What kind of actions had you observed?

A. I felt that his tendency was to be less than objective I would say on a professional level with people. I felt that he made personal decisions about whether or not he liked someone rather than how they were performing.

Q. What led you to believe — strike that. [26] What led you to believe that he was making personal decisions about his folks as opposed to looking at their individual performance?

A. Comments that he made to me directly.

Q. What were those comments?

A. I guess an example would be his comment that he felt he had too many older people and ailing people, old, sick people in his department.

Q. Were there any other examples?

A. Well, there were numerous discussions and numerous comments made in that direction.

Appendix F

Q. Well, what were those discussions, comments?

A. All of them?

Q. Yes. I would like to know about all of them, please.

A. I don't know that I can recall every single circumstance. One very specific situation was with an employee on my team who had had to take time off due to an accident, an injury, and I was given instructions to once he returned to work, build a case against him so that Mr. Stock would have evidence to fire him.

Q. Are there any other circumstances that you can recall other than Mr. Stock telling you to [27] build a case against another employee and making comments to the effect he had too many older and sick employees in his department?

A. He frequently made references about his concerns about a couple of other employees as well as who had medical issues and who were older and made comments about waiting for layoffs to secure so that he could clean up his department.

Q. Anything else?

A. I think that's pretty much -- you know, it's generally --

Q. Specifically can you recall any other comments or discussions that you thought were inappropriate?

A. I don't recall any at the moment. There were a number of discussions. It seemed to be his general attitude, so there

were a number of times that there were those type of comments made.

Q. As we sit here today, you can't remember any of those other comments other than the ones you've already testified about; is that correct?

A. Not right off the top of my head, no.

Q. Do you need to take a few minutes to think about it? Would that help?

A. If you would like.

[28] Q. Why don't we take a couple minute break.

A. Okay.

Q. Let me know when you think you've had enough time.

(Recess.)

A. I do recall there was an older gentleman that we had taken on in a contract position and we were looking to — Ted was looking to fill that position permanently and several people including myself felt that this gentleman would be a good fit for that position based on the performance he demonstrated while he was on contract, and Ted made the comment that he would like to see someone a little younger in that job.

Appendix F

Q. (By Mr. Hulla) Anything else that you can remember?

A. I recall another comment that he made about one of the other managers on the same level as myself when he had to have some — he had a medical problem come up. And I don't remember his exact words, but it was a derogatory comment about how he guessed he couldn't depend on him either, something to that effect.

Q. Anything else?

A. Not that I can think of at the moment,

* * *

[29] * * *

Q. You mentioned that you heard Ted Stock made comments to the effect that he had too many older, sick employees in his department; is that [30] correct?

A. He said those things directly to me.

Q. Was anyone else present when he said those things to you?

A. Not that I recall.

Q. Do you know who he was referring to when he said he had too many older, sick employees in his department?

A. I know that he personally referred to a gentleman by the name of Mark Craigin. He personally referred to Carolyn Selberg, to Yvonne Wood.

Q. Anyone else?

A. There's another gentleman in the department, but he was a contract employee and I can't remember his name.

Q. When you say "he referred to them," do you mean in the context of this comment that he said he had too many older, sick employees in his department?

A. He specifically used them as examples.

Q. When did Mr. Stock make this comment to the effect he had too many older, sick employees in his department?

A. What date, time?

[31] Q. Yes.

A. I can't give a date and time. It was a frequent conversation, a frequently expressed concern.

Q. Do you remember when he first raised that concern?

A. No, I don't.

Q. Recall when he would have first -- I'm not going to ask you about a specific date. I understand you don't recall a specific date; is that correct?

A. That's correct.

Q. Do you remember a general time frame when he made those comments?

A. When I first went to work in his department, I was not reporting directly to him. I was reporting to a senior manager for him. And about a year into the engagement Ted reorganized his staff and had me reporting directly to him in a senior manager capacity. So it would have been shortly after that period of time.

Q. Do you know when that was?

A. It would have been around the first part of 2001.

Q. Do you know how long -- strike that. Do [32] you know over what period of time Mr. Stock made these comments to you?

A. For about not quite a year.

Q. On how many occasions did Mr. Stock make comments to the effect he had too many old, sick employees in his department?

A. I can only say frequently. I couldn't give you a number, but . . .

Q. You're not sure how many times he said it?

A. It was a frequent concern that he expressed. I couldn't put a number to it. I don't think I could be that precise.

Q. Do you know what frequency it was that he made those comments?

A. I would just guess that it would be at least a couple of times a month.

Q. Did Ted Stock ever tell you why he was telling you these things?

A. Why?

Q. Yes.

A. He made comments about having pressure to get things done and being concerned that his work force couldn't perform in the capacity that he was happy with. So I'm assuming that it was — he [33] felt that that was something that impacted his ability to perform as he was expected to.

Q. Do you know if anyone overheard your conversations with Mr. Stock to the effect he had too many old and sick employees in his department?

A. I don't know if anyone overheard that, no.

Q. Do you know if Mr. Stock told anyone else that he felt he had too many old and sick employees in his department?

A. Yes.

Q. Who is that?

A. David Allen is one of his senior managers. Mark Sander who was another one of his senior managers. Jan Richter is another one of his senior managers. It was discussed among us that he had made those comments.

Q. Did you ever raise concerns that you had about Ted Stock making such comments to anyone at Sprint?

A. Did I raise those concerns to someone else at Sprint?

Q. Yes.

A. Other people at my peer level in casual discussion. I was under contract at the time, so [34] I was always careful about the kind of comments that I made about anyone.

* * *

[41] * * *

Q. You mentioned an individual who had been off of work because he or she had been involved in an accident; is that correct?

A. That's correct.

Q. Who was that?

A. Mark Craigin.

Q. And I believe it's your testimony that to the effect that Ted Stock asked to build a case against Mark; is that right?

A. Yes, he did.

Appendix F

Q. When did Ted Stock ask you to build a case against Mark Craigin?

A. After Mark had returned to work.

Q. Do you know what time frame that was?

A. I don't remember the dates.

Q. Do you recall a general time frame?

A. It must have been the latter part of 2001.

Q. You were still in the position as a contractor for Sprint; is that correct?

A. Yes.

* * *

[45] * * *

Q. Did you raise any objections about Ted Stock's request to build a case against Mark Craigin to anyone else?

A. No.

Q. Why is that?

A. Because I was under contract and I felt that it would be detrimental to my position.

Q. Any other reason?

A. No.

Q. Did anyone else -- strike that. Was anyone else present when Ted Stock asked you to build a case against Mark Craigin?

A. No.

Q. How many times did Ted Stock ask you to build a case against Mark Craigin?

A. There was one meeting that we had that he gave me instruction on what he wanted me to do. We had numerous conversations and follow-up about [46] how that was going.

* * *

Q. Did you tell anyone other than Mr. Stock about Mr. Stock's request that you build a case against Mark Craigin?

A. I discussed it with David Allen, discussed my concern about it with David.

Q. What did you and David talk about?

A. Just general, you know, peer conversation about we don't agree with the boss' position on this, but you know, you got to do what you got to do. You got to do what you're told to do.

Q. Do you recall when you spoke to David Allen about the fact that Ted Stock asked you to build a case against Mark Craigin?

[47] A. Just that it was in that same time frame shortly after it occurred.

Q. I believe you said Mr. Stock frequently made references to the effect he had concerns about older employees and employees with medical issues; is that correct?

A. That's correct.

Q. And that he was waiting for layoffs to arise so that he could clean up your department I think were your words; is that right?

A. Yes, that's accurate.

Q. And when did he make those comments, do you know?

A. During the period of time that I was reporting directly to him.

Q. And were others around when he made those comments?

A. I don't recall.

Q. Did you ever discuss the comments that Ted Stock made by wanting to clean up his department with anyone else?

A. The other managers in the department.

Q. Again, that's Jan Richter, Mark Sander and David Allen; is that right?

A. That's correct.

[48] Q. Anyone else?

A. As I mentioned, I mentioned my concern about that to Cloene Davis.

Q. What was Cloene's response?

A. As I mentioned, she was a little defensive of him, you know protective of him.

* * *

[49] * * *

Q. Did you ever ask Cloene Davis to follow up on your concerns about Ted Stock —

A. No.

Q. — and comments he was making? Why was that?

A. I trusted her judgment about it, about the situation.

Q. What do you mean that you trusted her judgment?

A. I gave her the information. She was a vice president, I didn't figure it was my — I didn't feel that it was my place

to give her instructions about what to do with that information.

Q. So you didn't accept this job in Ted Stock's department; right?

A. That's correct, I did not.

Q. You ultimately accepted a tech specialist position in October of 2002; is that right?

A. That's correct.

[50] Q. Who did you report to at that time?

A. To Cloene Davis.

Q. I believe you mentioned there was a contractor who was looking to — strike that. I believe you said that there was a contractor who was in a position and the company was looking to fill that position on a more permanent basis; is that correct?

A. That's correct.

Q. Who was that?

A. Chuck Jones.

Q. What was Chuck's age?

A. He was 55, early fifties.

Q. Do you know what Carolyn Selberg's age is?

A. I don't specifically know her age. I know that she is a little older than I am. She's probably in her mid fifties.

Q. Do you know what Yvonne Wood's age?

A. Yvonne is in her late forties I believe.

Q. Do you know Mark Craigin's age?

A. I think Mark was just a year or two younger than I am. He would be in his late forties, early fifties.

Q. This position that Chuck Jones had as a [51] contractor, was the idea to take that position and make it more permanent?

A. Yes.

Q. So the duties that Chuck Jones was performing would have been the same duties as the more permanent position; is that correct?

A. That's correct.

Q. Do you know who made the hiring decision for that position?

A. Ted.

Q. Who was hired into that role, do you know?

A. No, I don't.

* * *

[52] * * *

Q. But Chuck wasn't ultimately hired into that role; is that right?

[53] A. He was not.

Q. Do you know if Sprint interviewed anyone else for the position Chuck Jones had?

A. I do not know, I'm not —

Q. I believe you indicated Ted Stock didn't want to hire Chuck Jones; is that right?

A. That's correct.

Q. And I think you indicated that it was because he wanted someone younger; is that right?

A. That was the comment that he made.

Q. When did he make that comment?

A. When we talked. Actually myself and Mark Sander both talked to Ted about making Chuck permanent and

wanted to give him an offer and Ted kept expressing reluctance to do that. And in a conversation that I had with Ted about his reluctance and timing, you know, Is this someone you don't want to hire or is this just a timing issue, he asked the question or expressed the concern of can't we find someone who's younger and just more qualified or just as qualified or some — can we take a look at some other younger candidates.

* * *

[58] * * *

Q. I think we've talked about five separate topics. I want to go through them just to make sure that we've covered them all, see if there's anything that you can think of now that we haven't talked about so that we haven't missed anything. Okay.

A. Okay.

Q. We've talked about Ted Stock making comments to the effect he had too many older, sick employees in his department; is that right?

A. That's correct.

Q. We talked about Mark Craigin and his disability and the instructions from Ted Stock to the effect that he wanted you to build a case against him; is that right?

A. That's correct.

Appendix F

[59] Q. We also talked about the fact that Ted Stock frequently made references regarding concerns about other employees of medical issues and who are older and that he would have the opportunity with layoffs to clean up his department; is that right?

A. Yes.

Q. We talked about Chuck Jones and Ted Stock's desire to hire somebody younger into that position; is that right?

A. Yes.

* * *

Q. Do you know if Mark Craigin was ever terminated from employment at Sprint?

A. I believe that he was. I know that — well, I don't know, but I don't believe he is with [60] Sprint anymore.

Q. Do you know why he's not with Sprint anymore?

A. No, I don't.

Q. In October of 2002 you were hired into a tech specialist position reporting directly to Cloene Davis; is that right?

A. That's correct.

Q. What was your job grade as a tech specialist?

A. Seventy-nine.

Q. At any point in time while you worked for Sprint as an employee after October of 2002, did your job title change from anything other than a tech specialist?

A. No.

Q. Did your job grade change?

A. No.

Q. What were the responsibilities of your function as a tech specialist?

A. My responsibilities were to provide coaching and mentoring to Cloene's directors, in conjunction with Jerry Batt, the CIO's quality improvement plan, quality improvement program, and to organize efforts across her organization to [61] facilitate the implementation of changes in operations, methodologies, techniques to improve operations.

* * *

[87] Q. That was my fault. When were you told you were separated from employment at Sprint?

A. I believe the date was November 21st.

Q. Who told you?

Appendix F

A. Mike Carey.

Q. What did Mike tell you?

A. I was called into a meeting with Mike and one of his managers. I was given my separation documents and explained that I was part of the RIF that was occurring and given an overview on what my separation benefits would be, and then I was escorted out.

Q. Do you know if others had been told earlier in the day on November 21st that they were going to be subjected to a reduction in force and separated?

A. I know that, yes, other people were. I don't recall specifically who they were, but I do know that it was an ongoing thing for two or three days there.

Q. At the time that you had your meeting with Mike Carey, were you aware that other individuals were being separated from their employment at Sprint because of a RIF?

A. Yes.

* * * *

APPENDIX G — EXCERPTS FROM DEPOSITION OF BONNIE L. HOOPES DATED APRIL 23, 2004

ELLEN J. MENDELSOHN vs.

SPRINT/UNITED MANAGEMENT COMPANY

DEPOSITION OF BONNIE L. HOOPES

APRIL 24, 2004

[Commencing at page 5]

* * *

Q. Who lives with you at that address?

A. My husband.

Q. What is his name?

A. John.

Q. Anyone else?

A. No.

Q. Do you own any homes other than your home on 1927 Goodman?

A. No.

Q. What is your date of birth?

A. July 3rd, 1955.

Q. So you're 48 years old?

A. Yes.

* * *

[8] * * *

Q. Mrs. Hoopes, how long did you work for Sprint/ United Management Company?

A. Seventeen years.

* * *

[10] * * *

Q. When did you begin working at Sprint?

A. My original date of hire was in 1984.

Q. What was your age at that time?

A. Twenty-nine.

Q. You said your original hire date. Did you have a break in service while you were employed by Sprint?

A. Yes.

Q. What was your original position when you started with Sprint in 1984?

Appendix G

A. Business office coordinator.

Q. Where was that office located?

A. On Lowell in Overland Park.

Q. How long were you in the role as business office coordinator?

A. Approximately three months.

Q. Were you promoted at that time?

A. Yes.

Q. And what position were you promoted to?

A. Systems support supervisor.

Q. How long were you in the role of assistant support supervisor?

A. Until the merger in 1986.

[11] Q. When you say "the merger," you're talking about the merger with GTE?

A. Yes.

Q. That was between United Telecom and GTE?

A. Yes.

* * *

Appendix G

[18] * * *

Q. You were laid off as a program support manager, is that correct, in 1995?

A. Yes.

Q. Why were you laid off as a program support manager in 1995?

A. That's when the marketing department moved to Dallas.

Q. Do you know what your age was at the time?

A. Forty.

Q. Again, you were offered the opportunity to relocate to Dallas in 1995 and you did not; is that right?

A. That's correct.

Q. Did you have a break in service after you were laid off in 1995?

A. Yes I did.

* * *

Appendix G

[20] * * *

Q. So you initiated contact with Sprint to see if you could be employed there; is that right?

A. That's correct.

Q. You accepted an offer of employment from Sprint following your employment with QVC?

A. Yes.

Q. When was that?

A. March of '97.

Q. What was your age at that time, do you know?

A. Forty-two.

Q. When you were rehired by Sprint in March of 1997, what location did you work for Sprint at?

A. I believe the address was 7330 West 119th Street. No, College Boulevard.

Q. Was that in Overland Park, Kansas?

A. Yes.

* * *

Appendix G

[21] Q. And what position were you rehired into in March of '97?

A. Quality manager.

Q. How long did you hold the position of quality manager at Sprint?

A. Approximately two years.

Q. So at some point in time in 1999?

A. Yes.

Q. What was your next role at Sprint following your role as a quality manager?

A. Program manager for Y2K.

Q. And was the change in jobs from quality manager to program manager in Y2K a promotion?

A. No.

Q. Was it a demotion?

A. Yes.

Q. Your age at that time would have been 44 years old; is that right?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Were you given any awards for your role in Sprint's Y2K compliance efforts?

A. Yes, I was.

Q. What award was that?

[22] A. The Sprint Values Excellence Award.

Q. Is that an individual award or team award?

A. It was for our team.

* * *

[23] * * *

Q. Was the senior manager of strategic initiatives the last position you held at Sprint?

A. Yes.

Q. What location did you work from as a project manager of Y2K?

A. 9221 Ward Parkway.

Q. What location did you work from as a senior manager of strategic initiatives?

[24] A. The PCS building at College and Lowell.

Q. Did you ever work out on Sprint's campus?

A. No.

Q. What was your job grade as a senior manager of strategic initiatives?

A. Seventy-nine.

Q. And I believe you've previously mentioned that at some point in time your responsibilities as a senior manager of strategic initiatives changed; is that correct?

A. That's correct.

Q. What were your responsibilities as a senior manager of strategic initiatives when you started in April of 2000?

A. I'm sorry, I can't recall at this time.

Q. What were your responsibilities after they changed as a senior manager of strategic initiatives?

A. I went into project management.

* * *

Appendix G

[30] * * *

Q. When were you separated from employment [31] from Sprint most recently?

A. November 2002.

Q. At the time of your employment with Sprint was separated in November of 2002, did any of your direct reports also lose their jobs?

A. Yes.

Q. Who was that?

A. I'm sorry, I can't recall their names right now.

Q. At the time of your separation of employment in November of 2002, how many individuals were you supervising?

A. Six.

Q. You've previously identified four individuals who you had managed. There's two others that you managed at some point in time.

A. Yes.

Q. Do you recall what their names were?

Appendix G

A. Toyiah Cavole.

Q. Can you spell that?

A. I believe it's C-A-V-O-L-E.

Q. How do you spell Toyiah, do you know?

A. T-O-Y-I-A-H.

* * *

[32] * * *

Q. While you were employed as senior manager of strategic initiatives, did you manage any others other than Rick Steed, Toyiah Cavole, Jim Wenger, Donna Buffington and Diane Clark and a lady who was in her late twenties?

A. Yes.

Q. Who was that?

A. Rob Hisle.

Q. Anyone else?

A. Yes. There were more, but I cannot recall their names at this time.

Q. Do you know what Toyiah Cavole's age was at the time you supervised her employment?

A. Early thirties.

Q. Do you know what Rick Steed's age was at the time that you supervised his employment at Sprint?

A. He was in his thirties.

* * *

[49] * * *

Q. When were you notified of your separation of employment from Sprint?

A. November 2002.

Q. Do you remember the day?

A. I believe it was the 22nd.

Q. And who told you of your separation of employment from Sprint?

A. Chrystal Cone.

[50] Q. And what did Chrystal tell you at the time that she told you your employment was being separated on November 22nd, 2002?

A. That my job was eliminated.

Q. Did she tell you anything else?

A. She gave me a packet.

Q. Anything else?

A. No.

Q. Did she tell you why your employment was being separated from Sprint?

A. Because my job was eliminated.

Q. Any other reasons given?

A. No.

* * *

[51] * * *

Q. (By Mr. Hulla) Did you say anything to Ms. Cone at the time she told you your employment was being separated?

A. Yes.

Q. What did you tell her?

A. I asked why.

Q. And what did she say when you asked why?

A. She said my job was eliminated.

* * *

Appendix G

[58] * * *

Q. (By Mr. Huila) Do you have any reason to believe your position was not eliminated when you were terminated from employment at Sprint in November of 2002?

A. Yes.

Q. Why is that?

A. I spoke with Toyiah Cavole and she told me that she was performing part of my function.

Q. What part of your function was Toyiah Cavole performing?

A. Negotiating service level agreements.

Q. Anything else?

A. Not that I recall.

Q. Negotiating service level agreements, [59] that was the only part of your responsibility as a senior manager of strategic initiatives; is that correct?

A. That's correct.

Q. And do you know if anyone performed your other responsibilities after your separation of employment from Sprint?

A. Yes.

Q. Who was that?

A. Rob Hisle.

Q. What was Rob Hisle doing after your separation of employment from Sprint that you had been doing before?

A. Working on complaints of systems down.

Q. Anything else?

A. Yes.

Q. What else?

A. There was another woman, I can't remember her name, and she was doing the rest of my duties.

Q. Okay. Do you know what the age was of the woman who was doing the rest of your duties?

A. In her thirties.

Q. Toyiah Cavole, what was her job grade at the time of your separation of employment, do you know?

[60] A. I believe it was a 74.

Q. You were 79; is that right?

A. That's right.

Q. And Rob Hisle, what was his job grade at the time of your separation of employment from Sprint?

A. He was a 77.

Q. And the woman whose name you can't recall who was responsible for the rest of your functions, what was her job grade, do you know?

A. Seventy-nine.

Q. So if I understand you correctly, your responsibilities from your position were distributing to Toyiah Cavole, Rob Hisle and an unnamed woman; is that correct?

A. That's correct.

Q. So all of your — as far as you know, all of your job responsibilities were still continuing to be performed at Sprint just by three different individuals; is that right?

A. Yes.

Q. Do you know if anybody ever came in and backfilled your position as senior manager of strategic initiative?

A. No, I don't know.

Appendix G

[61] Q. And again, how is it that you know that Toyiah Cavole was responsible for some of the functions you had prior to your separation of employment?

A. She told me so.

Q. And how was it that you became aware that Rob Hisle was doing some of your responsibilities?

A. He told me.

Q. How about this unnamed woman, how is it that you became aware that she was doing some of your responsibilities?

A. Rob told me.

Q. Do you know how the decision was made to separate your employment from Sprint?

A. No, I do not.

Q. Do you know who made the decision to separate your employment from Sprint?

A. No.

Q. Do you know if you were compared to others at the time of your separation of employment from Sprint?

A. Yes.

Q. Who were you compared with?

A. Other senior managers.

* * *

[62] * * *

Q. Did you ever receive an alpha rating while employed at Sprint?

A. Yes.

Q. What was that?

A. I believe it was an I.

Q. What was your understanding of what an I rating was?

A. Improvement needed.

Q. Who gave you that rating?

[63] A. Sharon Vorhies.

Q. Did you disagree with that rating?

A. Absolutely.

Q. Why was that?

A. Because I didn't — I was a high performer.

* * *

[82] Q. Who did you observe making comments about employees' ages?

A. I don't recall their names.

Q. When was it that you observed employees talking about other employees' ages?

A. What year?

Q. Do you know a time frame?

A. A time frame, it was in the year 2002.

Q. Do you remember where you were when you observed these employees talking about others ages?

A. Yes.

Q. Where were you?

A. In the office.

Q. But you don't recall who the individuals were; is that right?

A. No.

Q. What did these individuals say about these other employees' ages?

A. That there was a lot of young people in our group.

Q. Anything else?

A. That I was the oldest.

Q. Anything else?

A. And that I had the most seniority.

[83] Q. Is that it?

A. That's all I can recall right now.

Q. How many occasions did these conversations occur?

A. A couple.

Q. Were you the oldest employee in your group?

A. Yes.

Q. Did you share their belief that there was a lot of young employees in your group?

A. Yes.

Appendix G

Q. Was it true that you also had the most seniority of anyone in your group?

A. Yes.

* * *

[89] * * *

Q. Mrs. Hoopes, you understand you've been identified as a witness by Ellen Mendelsohn; is that correct?

A. Yes.

Q. And were you aware that she had identified you as a witness who might have knowledge supportive of her claims of widespread age discrimination at Sprint?

A. Yes.

Q. What did you observe relative to widespread age discrimination at Sprint?

A. Coming from the long distance division, there was a balance of people that were over and people that were under 40. When going to PCS, it was if you were over 40, you were an anomaly.

* * *

Appendix G

[92] * * *

Q. Mrs. Hoopes, you've sought to opt into a lawsuit captioned Shirley Williams versus Sprint/United Management Company; is that correct?

A. That's correct.

Q. Why did you do that?

A. Because I felt that I was discriminated against.

Q. Why did you feel you were discriminated [93] against?

A. Because I was over 40.

Q. Is that the only reason why you feel you were discriminated against?

A. No.

Q. What are the other reasons?

A. I feel I was discriminated against because I was on disability.

Q. Any other reasons?

A. And because I received a low rating, a 4 and a shadow I.

Q. Anything else?

A. No.

Q. We've covered your 4 and I rating; is that correct?

A. Yes, we have.

Q. Is there anything at all that we haven't talked about relative to your 4 and I rating that support your belief that you were discriminated against because of your age?

A. Yes.

Q. What is that?

A. Sharon Vorhies told me that I was too old for the job.

Q. When was that?

[94] A. That was when she was discussing my performance.

Q. When was that?

A. I believe it was February, March 2002.

Q. What exactly did Sharon Vorhies say when you were discussing your performance feedback regarding your age?

A. She said that she expected me to be more energetic and adhere to the Jack Welch 4 Rs.

Q. Anything else?

A. Just what I've told you.

Q. What was your response when she told you she expected you to be more energetic?

A. I told her that I felt I was energetic.

Q. So you didn't think you needed to be more energetic?

A. No.

Q. Did she feel you needed to be more energetic because of your age?

A. Yes.

Q. What was your understanding of what the Jack Welch four Rs were?

A. I can't recall them right now.

Q. Did she tell you you needed to adhere to the Jack Welch four Rs because of your age?

[95] A. Not because of my age, no.

Appendix G

Q. Did you believe her comments regarding the Jack Welch four Rs related in any way to your age?

A. Yes.

Q. Why was that?

A. Because she told me I was too old for the job.

Q. Anything else that you can think of that supports your belief that you were discriminated against because of your age, other than what we've talked about so far today?

A. No.

Q. Did you mention earlier that you had used the services at Right Management; is that correct?

A. Yes.

Q. And who provided you those services at Right Management?

A. Sprint.

* * * *

APPENDIX H — EXCERPTS FROM DEPOSITION OF JOHN E. HOOPES, JR. DATED APRIL 24, 2004

ELLEN J. MENDELSOHN vs.

SPRINT/UNITED MANAGEMENT COMPANY

DEPOSITION OF JOHN E. HOOPES, JR.

APRIL 24, 2004

[Commencing at page 5] * * *

Q. What is your date of birth?

A. 4/11/49.

* * *

[6] * * *

Q. Okay. When did you begin working for Sprint?

A. February 15th, 1986, I believe.

* * *

[7] * * *

Q. What was your last day of work at Sprint?

A. February — I think it's February 8th, 2002.

* * *

Appendix H

[22] * * *

Q. And why did you believe you weren't able to apply for other roles at Sprint?

A. Because when I was at the — when they were making the decision for layoffs, we were told that we were not able to apply for jobs.

Q. Were you still employed by Sprint at the time that you were told that?

A. Oh, yes.

Q. And why did they tell you you were unable to apply for other jobs at that time?

A. Because it was being decided by the — whoever that was populating the organization, the reorganized company.

[23] Q. Was there a freeze put on the company at that time from hiring?

A. Not officially. We were told by our director that we were not able to apply for the open positions in the new reorganized one and that they would be chosen.

Q. Okay. So the company was choosing who to retain as part of its reorganization; is that correct?

A. I believe so.

Appendix H

* * *

[25] * * *

Q. When were you told of your separation of employment from Sprint?

A. February 8th.

Q. That was 2002?

A. 2002.

* * *

[26] * * *

Q. Who told you your employment with Sprint was being separated?

A. Informally I was told by my manager on the way to my director's office and formally I was told by my director.

Q. Your manager at the time was?

A. Terri Reynolds.

Q. Who was your director?

A. I don't remember, I'm sorry. I apologize, I just don't remember at this time.

Q. Did Terri Reynolds tell you why your employment with Sprint was being separated?

A. No.

Q. Did your director tell you why your employment with Sprint was being separated?

A. From what I recall, I believe he said they were downsizing.

* * *

[28] * * *

Q. Do you know today who was separated of who reported to Terri Reynolds?

[29]A. In hindsight no one other than me was RIF'd under Terri that I can locate or that I had any contact with.

* * *

Q. Do you know if anyone other than you was separated as part of a reduction in force in February of 2002 who reported up to your director at that time?

A. Yes.

Q. Who were those individuals?

A. There was like 15 or 20 of us and I don't remember their names either.

Q. Do you know what their ages were?

A. Yeah. One was a gentleman — that was not all the people. Let me just say that people that I knew, you know, out of those 20 or 30, there were about five or so that I knew all of them were very close to my age, 55 or older with one exception, and he was 48.

Q. Are you aware of anyone under the age of 40 who was separated in February of 2002 who reported up to your director?

[30] A. None. I'm not aware of any.

* * *

[31] * * *

Q. After your separation of employment from Sprint in February of 2002, were there individuals who reported up to your director who were not separated and were 40 years of age or older?

A. Yes.

Q. Who are they?

A. Terri Reynolds, she was demoted.

Q. Anyone else?

A. Yeah. One other woman and she was in her early forties and she was demoted also.

Q. Were you aware of any employees under the age of 40 that reported up to your director who had been demoted?

A. Other than those two, no.

Q. Those two were over the age of 40; is [32] that correct?

A. Yes.

Q. Were you aware of any employees under the age of 40 who reported up to your director who had been demoted?

A. None that I knew of. In fact, there was more promotions.

Q. Are you aware of anyone over the — strike that. Are you aware of anyone under the age of 40 who was part of a reduction in force in February 2002 in your director's organization?

A. Say that again.

Appendix H

Q. Are you aware of anyone under the age of 40 who was part of the reduction in force in February of 2002 in your director's organization?

A. I don't know all the people that were laid off. I mean, I know roughly how big it was. So for me to say that — I don't know, I really don't know. But the people that I had contact with, there was not a single person below 40.

* * *

[34] * * *

Q. That's okay. The decision to separate your employment would have been made after December of 2001; is that correct?

A. It was made after 2001 because I was laid off in February of 2002. So sometime in there, yes.

Q. Is it your understanding that your position as a software engineer 5 reporting to Terri Reynolds was eliminated?

A. What do you mean by "eliminated"?

Q. Do you know what happened to your responsibilities as a software engineer 5 following your separation of employment?

[35] A. In total they were added to another manager's responsibility.

Q. Who was that?

A. I'm sorry, I don't remember her name. I do remember, you know, I know her age.

Q. What is her age?

A. Her age was roughly 36 or younger.

* * *

[36] * * *

Q. Prior to your separation of employment in February of 2002, had you received a rating for the 2002 calendar year?

A. I believe I had, yes.

[37] Q. What was your rating?

A. I believe it was a 3.

Q. That was under the numeric system; is that correct?

A. That is correct.

Q. Did you receive an alpha rating for 2001?

A. We had not been given any indication that an alpha rating was going to be given to us. We — as far as I know, I did not get an alpha grade, however an alpha grade was assigned to me by — and I don't know by who, but it was assigned to me.

Q. How do you know that an alpha grade had been assigned to you?

A. Several — well, first of all, Terri Reynolds told me that an alpha grade had been assigned to me and she did not know what the alpha grade was.

Q. So it was your understanding that the company had gone through the machination of evaluating your performance under their alpha system; is that correct?

A. That was the first time I heard that there was a letter grade and that it was applied to me.

* * *

[40] * * *

Q. Had you ever used the job interest process to find other employment at Sprint?

A. Yes, many, many, times.

* * *

[41] * * *

Q. Did you have any concerns or complaints about the job interest request process after your employment at Sprint?

A. Yes.

Q. What are those concerns?

A. Lack of response.

Q. Let me make sure I understand what your concerns are. You had used the job interest request process after you were employed by Sprint?

A. Right, at Right Management.

Q. How many positions did you apply for using the job interest request process at Right Management?

A. The numbers are kind of hard to figure, but I applied for — on every Tuesday and Thursday from February 2000 till almost February of 2003 every — I made a goal of applying for at least five jobs on Tuesday and five jobs on Thursday. [42] There were many times when I would apply for 15 to 20 jobs on those days. So to tell you a number, it's very difficult for me to be able to answer that.

Q. I think you said February of 2000. I'm not trying to trick you here.

A. I meant 2002, yes. February of 2002 to February of — well, maybe even a little bit later than that, February '03.

Q. If I understand you correctly, your goal was on Tuesdays and Thursdays of each week to apply for at least five jobs on each of those days; is that correct?

Appendix H

A. On the JIR system using — from Right Management.

Q. And were you targeting those positions that you thought you were qualified to perform?

A. Yes, of course. Even ones that I knew I was overqualified, drastically overqualified.

Q. You understood that the company was still going through reductions in force; is that right?

A. These were for bonafide open positions.

Q. Do you know if those position were ever filled?

A. In many cases, yes.

[43] * * *

Q. Since your separation of employment in February of 2002, have you had contact with any former Sprint employees?

A. Oh, yes.

Q. Who is that?

A. I actually mentioned before, I went weekly or daily from February of 2002 to February of 2003 almost daily. I mean it wasn't every day, but it was at least twice a week, sometimes four times a week to Right Management. Right Management was filled with people that were laid off.

Q. Then were some of the people there over the age of 40?

A. I only saw an occasional person who was [44] less than 40. So the vast majority of them were over 40.

* * *

[51] * * *

Q. Mr. Hoopes, were you aware that you had been identified by Ellen Mendelsohn as an individual with knowledge of allegations of widespread age discrimination at Sprint?

A. Only through this process.

Q. And what information did you have about widespread age discrimination at Sprint?

A. My experience at Right Management.

[52] Q. Anything else?

A. Personal experience.

Q. What were those personal experiences?

A. Personal experiences that I'm over — I was over 50 when I was laid off within three years of early retirement age.

Q. Anything else?

A. That's it I believe. And those are just speculations.

Q. Okay. Your experience at Right Management that included applying for numerous positions at Sprint and not getting any job offers?

A. Yes.

Q. Did you ever get any interviews for any of the positions you applied for while you were looking through Right Management?

A. Yes.

Q. What positions did you interview for?

A. I interviewed for a system administrator, for a position as a project manager like a 1 or 2 and I think that was about it, maybe another one.

Q. You don't remember what the other one was?

A. It was along that line of project manager [53] in the technical arena of some sort.

Q. Were you ever offered any position that you interviewed for?

A. No.

* * *

Q. What else were you referring to when you said experiences at Right Management?

A. We talked about that earlier. It's that the majority of people at Right Management were — the vast majority were elder, older than 40 years old. Elder, that's not the right word.

Q. Anything else that you're referring to when you said your experiences at Right Management other than your contention that the vast majority [54] were older and that you had interviewed for only a few positions and hadn't been offered anything by Sprint?

A. No, I don't think so.

Q. Were you ever dissuaded by anybody from Right Management from applying for positions at Sprint?

A. Weekly.

Q. And who was it that dissuaded you from applying for positions at Sprint?

A. My advisor, whoever that advisor was at that given time.

Q. You don't remember their names?

A. They change from week to week, month to month.

Appendix H

Q. What did they tell you in reference to applying for positions at Sprint?

A. Basically that it may not be a good idea to apply.

Q. Why was that?

A. They never gave me an explanation why.

* * *

[57] * * *

Q. Did you hire individuals over the age of 40?

A. Yes. In both cases the people that were over 40, I had to have vice president approval.

Q. Why was that?

A. Because they were over 40.

Q. Someone told you that you had to have vice president approval to hire anyone over the age of 40?

A. The director told me that.

Q. Which was that?

A. Whichever director I was under at that time.

Q. What position were you in at that time?

A. One was a manager of technical training and the other was a software engineer 5.

Q. And did you raise any complaints to anyone that you had to have a vice president's authorization to hire someone over the age of 40?

A. In wasn't worded as they were over 40. It was worded at his age, okay.

* * *

[59] * * *

Q. Why is it that you feel that the process was discriminatory?

A. Because of what we talked about previously about Right Management and other [60] practices that I've seen.

Q. What are those other practices?

A. Those two cases I was talking about of hiring people that were a little older and more qualified.

Appendix H

Q. You were told you had to get vice president's approval because of their ages; is that right?

A. It wasn't said because of their ages, but because they were not as young maybe, you know, not — basically not — it never came out and was said, Because this person is 42, I need for you —

Q. What was said?

A. In one case specifically I was asked why I would hire someone who was 48 years old.

Q. Who asked you that?

A. That was the vice president of UMV training.

* * *

[61] * * *

Q. And what was said in the other case?

A. The other case was why are you hiring someone — not hiring someone from school.

Q. From where?

A. Out of school or not out of school, but — what is the program where we go — Sprint went to campus and hired people from the campus?

Appendix H

Q. College recruiting.

A. College recruiting. Why wasn't it — why wasn't I hiring someone from the college recruiting.

* * * *



APPENDIX I — PRETRIAL ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS FILED JULY 29, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV-DJW

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

PRETRIAL ORDER

Pursuant to Fed. R. Civ. P. 16, a pretrial conference was held in this case on July 19, 2004, before the Honorable David J. Waxse, U.S. Magistrate Judge.

This pretrial order shall supersede all pleadings and control the subsequent course of this case. It shall not be modified except by consent of the parties and the court's approval, or by order of the court on its own motion to prevent manifest injustice. *See* Fed. R. Civ. P. 16(e); D. Kan. Rule 16.2(c).

Appendix I

1. APPEARANCES.

The plaintiff, Ellen J. Mendelsohn, appeared at the pretrial conference through counsel, Dennis Egan. The defendant, Sprint/United Management Company, appeared through counsel, Patrick Hulla.

2. NATURE OF THE CASE.

This is an employment discrimination case. The plaintiff, Ellen J. Mendelsohn, alleges Defendant, Sprint/United Management Company, violated the Age Discrimination in Employment Act (the "ADEA"), 29 U.S.C. § 621 et seq., by terminating her employment.

3. PRELIMINARY MATTERS.

a. Subject Matter Jurisdiction. Subject matter jurisdiction is invoked under 28 U.S.C. § 1331 and is not disputed.

b. Personal Jurisdiction. The court's personal jurisdiction over the parties is not disputed.

c. Venue. The parties stipulate that venue properly rests with this court.

d. Governing Law. Subject to the court's own determination of the law that applies to the case, the parties agree that the substantive issues in this case are governed by the ADEA, its implementing regulations, and case law interpreting the ADEA and the affirmative defenses raised by defendant.

Appendix I

4. STIPULATIONS.

a. The following facts are uncontroverted:

1. Ellen Mendelsohn's date of birth is August 8, 1951.

2. Bill Blessing's date of birth is August 12, 1955.

3. Paul Reddick's date of birth is January 4, 1962.

4. Jim Fee's date of birth is August 26, 1956.

5. Jo Renda's date of birth is April 17, 1955.

6. Mike Bauerle's date of birth is November 3, 1963.

7. Steve Cote's date of birth is October 19, 1968.

8. Chris Bierbaum's date of birth is April 8, 1966.

9. Whitney Siavelis' date of birth is May 4, 1970.

10. Dan McCauley's date of birth is August 23, 1963.

11. Defendant initially employed plaintiff from September 12, 1983 to September 5, 1986.

12. Plaintiff's last date worked with defendant was November 22, 2002.

b. The following documents, which have been produced in the course of discovery, constitute "business records" within the scope of Fed. R. Evid. 803(6) and may be introduced in evidence during trial subject to objections based solely on grounds of relevancy:

All documents produced by defendant, for which an evidentiary foundation has been, or can be established, which are not privileged or are attorney work product.

c. Copies of exhibits may be used during trial in lieu of originals.

d. The parties have not stipulated to the admission of exhibits at this time. However, by the Friday before trial begins, the parties shall file a stipulation concerning exhibits that can be pre-admitted.

e. At trial, witnesses who are within the subpoena power of the court and who are officers, agents, or employees of the parties need not be formally subpoenaed to testify, provided that opposing counsel is given at least 2 days advance notice of the desired date of trial testimony.

f. By no later than 3:00 p.m. each day of trial, counsel shall confer and exchange a good faith list of the witnesses who are expected to testify the next day of trial.

g. Subject to the court's own determination of the law that applies to the case, the following legal principles are undisputed by the parties:

Appendix I

The essential elements of plaintiff's claim for age discrimination include:

1. She is a member of the protected class,

2. She suffered an adverse employment action;

3. She was qualified;

4. She exhausted her administrative remedies;

5. That the stated reasons given by defendant for the adverse employment action are pretextual;

6. That age was a motivating factor in the adverse employment action; and

7. She was damaged by defendant's actions.

Plaintiff must establish a *prima facie* case and that she exhausted her administrative remedies. If plaintiff establishes a *prima facie* case, the burden of production shifts to defendant to articulate a legitimate, non-discriminatory reason for the adverse employment action. Once defendant meets its burden of production, plaintiff must then prove the reason proffered is pretextual and that age was a motivating factor for defendant's actions. If plaintiff establishes pretext and that age was a motivating factor for defendant's action, plaintiff must prove she was damaged.

Appendix I

5. FACTUAL CONTENTIONS.

a. Plaintiff's Contentions.

Plaintiff, Ellen Mendelsohn claims that her age was a motivating and/or determinative factor in defendant's decision to terminate plaintiff, while retaining younger, less experienced employees, in jobs similar to hers. Plaintiff is a 52 year old female, born in 1951. She had worked for Sprint for 13 years. Prior to November 14, 2002, she held the position of Manager III (Grade 79) in Sprint's Business Development Strategy Group-Mobile Financial Services. On November 14, 2002, plaintiff was notified she was terminated effective November 22, 2002 as a result of a reduction-in-force (RIF). She had always performed her duties in a satisfactory or better manner.

Just two (2) months before plaintiff's termination, a younger male, Chris Bierbaum was transferred *into* plaintiff's group as a Manager, Grade 78. Just before plaintiff's termination in November, 2002, there were four (4) groups within Sprint's Business Development & Strategy department called Incubator Groups. There were three (3) other managers working under James Fee within plaintiff's group. All three (3) of the other managers were under the age of 40. Plaintiff was the oldest manager in her BDS group.

Immediately *after* plaintiff's termination on November 22, 2002, two younger individuals under the age of 40, Whitney Siavelis and Dan McCauley, were transferred *into* plaintiff's group under James Fee. Previously Siavelis had

been assigned "special assignment" which within Sprint means you will no longer have a job once the "special assignment" is completed. It is well-known at Sprint that "special assignment" ordinarily is the "kiss of death." McCauley also was transferred from another department within the Business Development & Strategy Department into plaintiff's group. However, in this case, plaintiff was terminated from her permanent job, while these two younger individuals who had no permanent position were transferred into her group as Managers.

The project plaintiff was working on with the others in her group continued on after her termination. In fact, in her one-on-one and six month performance discussions with her supervisor before her termination, plaintiff was told that the project she was working on was "the most important project within the group." Therefore, defendant's choice to select plaintiff for termination was pretextual, because plaintiff had specific ongoing projects, younger employees without specific jobs were moved into plaintiff's department, plaintiff's group under James Fee actually *increased* in numbers after her termination, and younger employees holding grade-level and job titles similar to plaintiff were treated preferentially by being retained within Sprint in jobs plaintiff could perform.

In the other three (3) incubator groups, there were twelve (12) other managers, in jobs which plaintiff was qualified to perform by education and experience. All twelve managers were younger than plaintiff. All kept jobs within Sprint after the RIF.

b. Defendant's Contentions.

Defendant denies it discriminated against plaintiff by separating her employment. Defendant contends plaintiff's termination of employment was the result of a reduction in force precipitated by cost-cutting measures undertaken by Sprint PCS. Based upon recent performance by plaintiff and others in the BDS organization, plaintiff's managers concluded that others had demonstrated they were better able to perform the jobs that remained in the reorganized BDS department. Defendant contends both the reduction in force and its belief that plaintiff's performance did not justify her continued employment are legitimate non-discriminatory reasons for her separation.

6. THEORIES OF RECOVERY AND AFFIRMATIVE DEFENSES.

a. Plaintiff's Theories of Recovery. Plaintiff asserts that she is entitled to recover upon the following theory:

Plaintiff asserts she is entitled to recover, because she was terminated in violation of the ADEA.

b. Defendant's Defenses. Defendant asserts the following defenses and affirmative defenses:

1. Plaintiff has failed to state a claim upon which relief can be granted. Plaintiff can not demonstrate age was a motivating factor in her separation, nor can she demonstrate pretext.

2. Even if plaintiff proves age was a motivating factor, which defendant denies, Defendant would have made the same decision due to legitimate, non-discriminatory reasons.

3. Plaintiff's claim for liquidated damages is barred by defendant's well established and effective policies against age discrimination, and to the extent any age discrimination did occur, which defendant denies, such discrimination was in violation of defendant's policies and procedures.

4. Plaintiff's claims are barred by her failure to timely exhaust her administrative remedies in that she never filed a charge of discrimination.

5. Plaintiff's damages, if any, were caused in whole or in part by sources other than defendant.

6. Plaintiff has failed to mitigate her damages.

7. Plaintiff's separation was due to reasonable factors other than her age.

8. Plaintiff's claims exceed the matters asserted before the Equal Employment Opportunity Commission.

c. Counterclaims; Cross-Claims; Third-Party Claims.

None.

Appendix I

7. ISSUES.

a. Plaintiff's Theories of Recovery (i.e. age discrimination)

(1) ***Essential Elements.*** Subject to the Court's own determination of the law that applies to this case, the parties agree that, in order to prevail on her theories of recovery for age discrimination, plaintiff has the burden of proving the following essential elements:

(a) That she is a member of a protected class;

(b) That she suffered an adverse employment action of termination;

(c) That she was qualified for the position at issue;

(d) That the stated reasons given by Sprint for its actions in making RIF decisions were pretextual;

(e) That plaintiff's age was a motivating factor or determinative factor for the adverse employment action; and

(f) That as a result of Sprint's action, plaintiff was damaged.

Appendix I

Plaintiff asserts that she also has the burden of proving she was treated less favorably than her younger counterparts.

Defendant asserts that plaintiff also has the burden of proving there is some evidence the employer intended to discriminate against her. *Beaird v. Seagate Technology, Inc.*, 145 F.3d 1159, 1165 (10th Cir. 1998)

(2) ***Issues of Fact.*** With regard to Plaintiff's theories of recovery for age discrimination, one or more of the parties assert that the following issues of fact must be resolved at trial:

(a) Plaintiff asserts the following issue of fact must be resolved at trial: Did Sprint treat younger employees more favorably than plaintiff by terminating plaintiff and keeping and transferring younger employees into plaintiff's department (or other positions for which plaintiff was qualified) just prior to and immediately after plaintiff's termination?

(b) Defendant asserts the following issue of fact must be resolved at trial: Whether Sprint intended to discriminate against Plaintiff by separating her employment during a reduction in force.

(c) Did plaintiff's termination cause her damage? If so, what is the nature and extent of such damages?

Appendix I

(3) ***Issues of Law.*** With regard to plaintiff's theories of recovery for age discrimination, one or more of the parties assert that the following issues of law much be resolved by the Court:

(a) Plaintiff asserts the following issue of law must be resolved by the Court: Is plaintiff entitled to equitable relief in the form of reinstatement to a permanent Manager's position, plus all raises and bonuses received by other Managers since her RIF through judgment?

Defendant asserts plaintiff's claim for injunctive relief is an issue in equity, rather than an issue of law. Defendant also asserts plaintiff's request for a "permanent Manager's position" is misleading, since Plaintiff was employed by Sprint at-will.

(b) Plaintiff asserts the following issue of law must be resolved by the Court: If plaintiff prevails, what amount of attorneys' fees, costs and expenses are recoverable by plaintiff?

Defendant asserts the amount of attorneys' fees either party may receive is not a matter of law.

Appendix I

(4) ***Mixed Issues of Law and Fact.*** With regard to plaintiff's theories of recovery for age discrimination, the parties agree that the following mixed issues of law and fact are involved in this case:

(a) Whether the actions taken by defendant were willful, so as to justify submitting the issue of willfulness to the jury.

b. Defendant's First Affirmative Defense (i.e., Good Faith).

(1) ***Essential Elements.*** Subject to the court's own determination of the law that applies to this case, one or more of the parties assert that, in order to prevail on this affirmative defense, defendant has the burden of proving the following essential elements:

Defendant asserts that it must prove the following to establish its good faith defense.

(a) Defendant had a policy prohibiting age discrimination;

(b) Defendant promoted and publicized its policy prohibiting age discrimination;

(c) Any acts or omissions constituting age discrimination (which defendant denies) were contrary to defendant's policy prohibiting age discrimination; and

(d) Defendant made a good faith effort to comply with the ADEA.

Plaintiff asserts good faith is not an affirmative defense.

(2) ***Issues of Fact.*** With regard to this affirmative defense, one or more the parties assert that the following issues of fact must be resolved at trial:

Defendant asserts the following facts must be resolved at trial:

(a) Whether defendant promoted and publicized its policy prohibiting age discrimination;

(b) Whether any acts or omissions constituting age discrimination (which defendant denies) were contrary to defendant's policy prohibiting age discrimination.

Plaintiff asserts good faith is not an affirmative defense.

(3) ***Issues of Law.*** With regard to this affirmative defense, one or more of the parties assert that the following issues of law must be resolved by the court:

Defendant asserts the following issues of law must be resolved by the court:

(a) Whether the good faith compliance standard set forth in *Kolstad v. American Dental Association,* 527 U.S. 526, 119 S.Ct. 2118 (1999) is an affirmative defense upon which defendant bears the burden of proof, or whether plaintiff must disprove defendant's good faith compliance with the ADEA; and

(b) Whether *Kolstad* applies to claims for liquidated damages under the ADEA.

Plaintiff asserts good faith is not an affirmative defense.

(4) ***Mixed Issues of Law and Fact.*** With regard to this affirmative defense, one or more of the parties assert that the following mixed issues of law and fact are involved in this case:

Defendant asserts the following issues of law must be resolved by the court:

Whether defendant's acts or omissions were in good faith.

Plaintiff asserts good faith is not an affirmative defense.

c. Defendant's Second Affirmative Defense (i.e., Failure to Exhaust Administrative Remedies).

(1) ***Essential Elements.*** Subject to the court's own determination of the law that applies to this case,

the parties agree that, in order to prevail on this affirmative defense, defendant has the burden of proving the following essential elements:

(a) Plaintiff failed to file a charge of discrimination;

(b) The EEOC failed to conciliate her charge of discrimination; and

(c) Plaintiff failed to identify within her charge of discrimination the acts or omissions for which she seeks damages.

(2) ***Issues of Fact.*** With regard to this affirmative defense, the parties agree that the following issues of fact must be resolved at trial:

(a) Whether plaintiff filed a charge;

(b) Whether the EEOC conciliated Plaintiff's charge of discrimination; and

(c) Whether plaintiff sufficiently identified the acts or omissions for which she seeks damages.

(3) ***Issues of Law.*** With regard to this affirmative defense, the parties agree that the following issues of law must be resolved by the court:

None.

Appendix I

(4) ***Mixed Issues of Law and Fact.*** With regard to this affirmative defense, the parties agree that the following mixed issues of law and fact are involved in this case:

None.

d. Defendant's Third Affirmative Defense (i.e., Failure to Mitigate Damages).

(1) ***Essential Elements.*** Subject to the court's own determination of the law that applies to this case, the parties agree that defendant has the burden of proving the following essential elements:

Plaintiff failed to mitigate her damages.

(2) ***Issues of Fact.*** With regard to this affirmative defense, the parties agree that the following issues of fact must be resolved at trial:

(a) Whether plaintiff suffered any damages;

(b) Whether plaintiff made reasonable attempts to mitigate her damages, if any; and

(c) Whether, after her separation of employment, plaintiff's failure to utilize outplacement services offered by Sprint, and her limitations upon her job search to part-time employment, the Kansas City area, and director and vice president level positions constitutes a failure to mitigate her damages.

(3) ***Issues of Law.*** With regard to this affirmative defense, the parties agree that the following issues of law must be resolved by the court:

(a) Whether plaintiff is precluded from making a claim for damages; and

(b) Whether plaintiff's damages, if any, should be reduced as a result of her failure to mitigate damages.

(4) ***Mixed Issues of Law and Fact.*** With regard to this affirmative defense, the parties agree that the following mixed issues of law and fact are involved in this case:

None.

c. Counterclaims; Cross-Claims; Third-Party Claims.

None.

8. DAMAGES.

a. Plaintiff's Damages.

As to plaintiff's claim under the ADEA, as of April 1, 2004, the following figures apply (to be updated, as necessary, at time of trial):

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Past Losses	***Future Losses***	***Total Economic Losses***
$100,883	$854,161	$955,044

Liquidated damages

Double the amount of actual past losses.

Plus an amount to compensate for adverse income tax consequences.

Plus attorneys fees, pursuant to 29 U.S.C. § 621, *et seq.*

b. Defendant's Damages.

None claimed, although defendant will request its costs and attorneys' fees if it is a prevailing party.

9. NON-MONETARY RELIEF REQUESTED, IF ANY.

Plaintiff seeks injunctive relief in the form of (i) reinstatement to her former position with defendant or its equivalent, including any pay raises and promotions she would have received, and (ii) an order restraining defendant from discriminating against plaintiff and any other individual because of that individual's age.

10. AMENDMENTS TO PLEADINGS.

None requested during the pre-trial conference.

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11. DISCOVERY.

Under the scheduling order and any amendments, all discovery was to have been completed by June 1, 2004. Discovery is complete.

12. WITNESSES AND EXHIBITS.

a. Final Witness and Exhibit Disclosures Under Rule 26(a)(3). The parties' final witness and exhibit disclosures pursuant to Fed. R. Civ. P. 26(a)(3) shall be filed no later than 20 days before trial. D. Kan Rule 16.2(e), entitled "Witness and Exhibit Lists and Disclosures," which the court is in the process of amending, will *not* be applied in this case. With regard to each witness disclosed under Fed. R. Civ. P. 26(a)(3)(A), the disclosures also shall set forth the subject matter of the expected testimony and a brief synopsis of the substance of the facts to which the witness is expected to testify. Witnesses expected to testify as experts shall be so designated. Witnesses and exhibits disclosed by one party may be called or offered by any other party. Witnesses and exhibits not so disclosed and exchanged as required by the court's order shall not be permitted to testify or be received in evidence, respectively, except by agreement of counsel or upon order of the court. The parties should bear in mind that seldom should anything be included in the final Rule 26(a)(3)-disclosures that has not previously appeared in the initial Rule 26(a)(1)-disclosures or a timely Rule 26(e) supplement thereto; otherwise, the witness or exhibit probably will be excluded at trial. *See* Fed. R. Civ. P. 37(c)(1).

b. Objections. The parties shall file any objections under Fed. R. Civ. P. 26(a)(3) no later than 11 days before trial. Any responses to such objections shall be filed no later than 5 calendar days before trial. The court shall deem waived any objection not timely asserted, unless excused by the court for good cause shown.

c. Marking and Exchange of Exhibits. All exhibits shall be marked no later than 5 calendar days before trial. The parties shall exchange copies of exhibits at or before the time they are marked. The parties shall also prepare lists of their expected exhibits, in the form attached to this pretrial order, for use by the courtroom deputy clerk and the court reporter. 'n marking their exhibits, the parties shall use preassigned ranges of numbered exhibits. Exhibit Nos. 1-400 shall be reserved for plaintiff(s); Exhibit Nos. 401-800 shall be reserved for defendant(s); Exhibits 801 and higher shall be reserved for any third party. [Optional: Each exhibit that the parties *expect* to offer shall be marked with an exhibit sticker, placed in a three-ring notebook, and tabbed with a numbered tab that corresponds to the exhibit number. The parties shall prepare an adequate number of exhibit books, including one book containing the original exhibits, two copies for the court, one copy for opposing counsel, and one copy for each juror if counsel intends to distribute exhibit books to jurors.]

d. Designations of Deposition Testimony.

(1) ***Written Depositions.*** Consistent with Fed. R. Civ. P. 26(a)(3)(B), any deposition testimony sought to be offered by a party other than to impeach a testifying witness shall be

designated by page and line in a pleading filed no later than 20 days before trial. No later than 11 days before trial, in accordance with Fed. R. Civ. P. 32(a)(4), the opposing party shall file a counter-designation by page and line of any portions of the deposition that the opposing party believes in fairness ought to be considered with the part the offering party has designated, together with any objections to the designations made by the offering party. Any objections to any counter-designations shall be filed no later than 5 calendar days before trial. The court will not entertain any objections to deposition testimony unless and until the parties have attempted in good faith to resolve the dispute among themselves either in person or via telephone conference. Where the court must resolve disputes concerning presentation of deposition testimony at trial, the objecting party shall deliver a copy of the deposition to the trial judge no later than 1 business day before trial. On this copy, those portions of the deposition that are intended to be presented at trial shall be marked by brackets in the margins with different colored highlighting. Red highlighting shall be used for plaintiff(s), blue highlighting shall be used for defendant(s), and yellow highlighting shall be used for any third party.

(2) ***Videotaped Depositions.*** The paragraph immediately above applies to videotaped depositions as well as written deposition transcripts. When, however, the parties require rulings outside the presence of the jury to facilitate a "clean" presentation of deposition testimony at trial, written transcripts rather than videotaped transcripts shall be presented in connection with the parties' objections. A party who offers a videotaped deposition must edit the tape

according to the designations and court's rulings so that it can be played in a manner that will not delay the trial.

13. MOTIONS.

a. Pending Motions.

None.

b. Additional Pretrial Motions.

The dispositive motion deadline, as established in the scheduling order and any amendments, is **July 23, 2004**.

Consistent with the scheduling order filed earlier in this case, the arguments and authorities section of briefs or memoranda submitted in connection with all further motions or other pretrial matters shall not exceed 30 pages, absent an order of the court.

c. Motions Regarding Expert Testimony. All motions to exclude testimony of expert witnesses pursuant to Fed. R. Evid. 702-05, *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), or similar case law, shall be filed by the deadline set for dispositive motions.

d. Motions in Limine. All motions in limine, other than those challenging the propriety of an expert witness, shall be filed no later than 20 days before trial. Briefs in opposition

to such motions shall be filed no later than 15 days before trial. Reply briefs, if any, shall be filed no later than 11 days before trial.

14. TRIAL.

a. This case is set for trial on the court's docket beginning on **January 4, 2005, at 9:30 a.m.** Unless otherwise ordered, this is not a "special" or "No. 1" trial setting. Therefore, during the month preceding the trial docket setting, counsel should stay in contact with the trial judge's courtroom deputy to determine the day of the docket on which trial of the case actually will begin.

b. Trial will be by jury.

c. Estimated trial time is 3-6 days.

d. Trial will be in Kansas City, Kansas, or such other place in the District of Kansas where the case may first be reached for trial.

e. Because of constraints on the judiciary's budget for the compensation of jurors, in any case in which the court is not notified of a settlement by **12:00 noon** on the day before the trial is scheduled to commence, the costs of jury fees and expenses will be assessed to the parties, or any of them, as the court may order.

f. Prior to trial counsel shall review the presiding judge's trial guidelines and/ or exhibit instructions on the district's Internet Website:

(http://www.ksd.uscourts.gov/chambers.pdf).

15. SETTLEMENT.

a. Status of Settlement Efforts.

Based upon prior limited settlement efforts, settlement appears unlikely.

b. Mediation and/or Other Method of Alternative Dispute Resolution.

Mediation and/or any other method of alternative dispute resolution are not ordered.

16. FURTHER PROCEEDINGS AND FILINGS.

a. Status and/or Limine Conference. A Status Conference is set for November 30, 2004 at 10:00 a.m. at 500 State Avenue, Suite 511, Kansas City, Kansas.

b. Trial Briefs. A party desiring to submit a trial brief shall comply with the requirements of D. Kan. Rule 7.6. Any trial brief by plaintiff(s) shall be filed no later than 15 days before trial. Any trial brief by defendant(s) shall be filed no later than 11 days before trial. The court does not require trial briefs but finds them helpful, particularly if the parties anticipate that unique or difficult issues will arise during trial.

c. Voir Dire. The parties shall file proposed voir dire questions no later than 15 days before trial. Any objections to such proposed questions shall be filed no later than 11 days before trial. Due to substantially differing views among judges of this court concerning the extent to which counsel should be allowed to participate in voir dire, counsel are encouraged to contact the trial judge's law clerk or courtroom deputy (in accordance with the preference of the particular trial judge) well in advance of the above-described deadlines to address what, if anything, actually needs to be submitted by way of proposed voir dire questions.

d. Jury Instructions.

(1) Requests for proposed instructions in jury cases shall be submitted in compliance with Fed. R. Civ. P. 51 and D. Kan. Rule 51.1. Counsel are encouraged to contact the trial judge's law clerk or courtroom deputy (in accordance with the preference of the particular trial judge) to determine that judge's so-called standard or stock instructions, e.g., concerning the jury's deliberations, the evaluation of witnesses' credibility, etc.; it is unnecessary to submit such proposed jury instructions to the court. The parties and the attorneys have the joint responsibility to attempt to submit one agreed set of preliminary and final instructions that specifically focuses on the parties' factual contentions, the controverted essential elements of any claims or defenses, damages, and any other instructions unique to this case. In the event of disagreement, each party shall submit its own proposed instructions with a brief explanation, including legal authority as to why its proposed instruction is

appropriate, or why its opponent's proposed instruction is inappropriate, or both.

(2) Proposed instructions in jury cases shall be filed no later than 15 days before trial. Objections to any proposed instructions shall be filed no later than 11 days before trial.

(3) In addition to filing the proposed jury instructions, the parties shall submit their proposed instructions (formatted in Word Perfect 9.0, or earlier version) as an attachment to an Internet e-mail sent to the e-mail address of the assigned trial judge listed in paragraph II(E)(2)(c) of the *Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means in Civil Cases.*

e. Findings of Fact and Conclusions of Law. This matter will be tried to a jury such that findings of fact and conclusions of law are not necessary. If there are any equitable issues remaining after the jury returns its verdict, the court will set forth a briefing schedule.

17. OTHER.

a. Conventionally Filed Documents. The following documents shall be served by mail and by fax or hand delivery on the same date they are filed with the court if they are filed conventionally, *i.e.*, not filed electronically: final witness and exhibit disclosures and objections; deposition designations, counter-designations, and objections; motions in limine and briefs in support of or in opposition to such motions; trial briefs; proposed voir dire questions and objections; proposed jury instructions and objections; and proposed findings of

fact and conclusions of law. In addition, a party filing a trial brief conventionally shall deliver an extra copy to the trial judge's chambers at the time of filing.

b. Miscellaneous.

None.

IT IS SO ORDERED.

Dated this 29th day of July, 2004, at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
U.S. District Judge

APPENDIX J — DEFENDANT'S MOTION IN LIMINE IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS DATED DECEMBER 15, 2004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Cause No. 03-CV-02429-KHV-DJW

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S MOTION IN LIMINE

Defendant Sprint/United Management Company ("Sprint") hereby requests an Order prohibiting Plaintiff, her counsel, and her witnesses from directly or indirectly introducing any evidence, argument or other reference, in the presence of the jury, whether during voir dire or trial, regarding the matters list below, unless and until such matters have first been called to the Court's attention out of the hearing of the jury and a favorable ruling is received as to the admissibility and relevance of same:

1. Any reference to: Sprint having a "pattern and practice" of age discrimination, a culture of age

discrimination, a history of age discrimination, or any similar broad allegation of age discrimination, including through its Alpha rating or staff associate program; any reference to age discrimination litigation against Sprint; and/or any reference to specific allegations of discrimination against Sprint employees not similarly situated to Plaintiff. No "pattern and practice" or disparate impact claim is included in the Pretrial Order of this case. Any alleged discrimination against Sprint employees not similarly situated to Plaintiff lacks probative value in this case. Plaintiff lacks sufficient personal knowledge of any "pattern and practice" of discrimination and/or any discrimination against others. Any references to such matters would require Sprint to defend itself against those references, unnecessarily complicating and lengthening the trial of this case. Any probative value which reference to a "pattern and practice" of discrimination or to discrimination against others not similarly situated to Plaintiff might have would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

2. Any reference to Plaintiff's opinions regarding the performance of any Sprint employee, the qualifications of other Sprint employees, and/or the relative qualifications or performance of any Sprint employees, including but not limited to Plaintiff, Tom Croutch, Brad Shore, John Overy, Patty Porter, Andy Volanakis, Kevin Warner, Mike Bauerle, and James Hallock, including reference to such opinions in an attempt to claim they support her conclusory allegations of age discrimination. Plaintiff lacks personal knowledge regarding the qualifications and performance of other Sprint employees, and any probative value in such reference would

be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

3. Any reference to Sprint's Alpha rating system or staff associate program as having any discriminatory purpose or effect, including any reference to an after-action review. No allegations that Sprint's Alpha rating system or staff associate program had any discriminatory purpose or effect are contained in Plaintiff's Charge of Discrimination, her Complaint, or the Pretrial Order. Even if reference to Sprint's Alpha rating system or staff associate program had any probative value in this case, such value would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. Any references to such matters would require Sprint to defend itself against those references, unnecessarily complicating and lengthening the trial of this case.

4. Any reference suggesting that terminating the employment of Plaintiff, or anyone else, because of her high salary and/or to eliminate costs would be evidence of age discrimination. Employment decisions based on cost are not age discriminatory, even if age correlates positively to salary. Further, any probative value in a reference suggesting that termination employment based on salary or costs would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

5. Any reference to age-derogatory remarks by any Sprint employee. Plaintiff admits she never heard any age-

derogatory comments, and that she has no knowledge that decisionmaker Paul Reddick ever made any age-derogatory remarks. Any reference to age-derogatory remarks would thus be hearsay and irrelevant. Further, any probative value in a reference to age-derogatory comments would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

6. Any reference to the fact that Sprint amended its responses to Plaintiff's Opening Interrogatories to Defendant and/or to any discrepancies between the two responses. Sprint followed the Federal Rules by serving amended answers to correct mistakes contained in the first, unverified response. The amended response was served prior to any depositions of Sprint witnesses such that Plaintiff's case was not prejudiced.

7. Any reference to Plaintiff facing a "David and Goliath" situation with regards to Sprint. Such reference would be irrelevant, and any probative value would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

8. Any reference to the opinions of and/or any appearance by Jie Chen, Ph.D. Although this individual has been listed by Plaintiff as a potential witness in this case, Plaintiff failed to timely disclose Dr. Chen and failed to provide the disclosures and written report as required by Federal Rule of Civil Procedure 26(a)(2) for this purported expert.

9. Any reference regarding Plaintiff's claim that the Equal Employment Opportunity Commission, or any other investigating agency, refused to pursue her Charge of Discrimination because it did not receive responses or information from Sprint. Any such claim would be based on hearsay, and would in any event not be relevant to the issues in this case. Further, any probative value regarding Plaintiff's claim would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

10. Any reference to the fact that counsel for Sprint is from outside Kansas and/or the Kansas City area, including any reference to the fact that counsel is from St. Louis, Missouri. The location of counsel's residence and/or office is not relevant to any issue in this case, and any probative value related to the location of counsel's office and/or residence would be substantially outweighed by the danger of unfair prejudice to Sprint.

11. Any reference to special assignments at Sprint being the "kiss of death" and any similar reference to special assignments. Plaintiff has no basis in fact for her conclusory allegation, and any probative value related to the allegation would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

12. Any reference to any relationship, actual or potential, between Sprint and WorldCom and/or Nextel. Any merger, discussion of merger, or other relationship between Sprint and WorldCom and/or Nextel is irrelevant to the matters at

issue in this case. Any probative value related to such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay.

WHEREFORE, for the foregoing reasons and the reasons set forth in Sprint's Memorandum of Law in Support of this Motion, filed concurrently herewith, Sprint respectfully requests this Court to enter an Order in Limine prohibiting any reference to any of the above matters unless and until such time as a particular matter has been brought to the Court's attention out of the presence of the jury, and the Court rules that reference to that particular matter is admissible and relevant, at which time reference may be made to that matter only.

Respectfully submitted

HUSCH & EPPENBERGER, LLC

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Appendix J

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APPENDIX K — MEMORANDUM IN SUPPORT OF DEFENDANT'S IN MOTION IN LIMINE DATED DECEMBER 15, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Cause No. 03-CV-02429-KHV-DJW

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

MEMORANDUM IN SUPPORT OF DEFENDANT'S IN MOTION IN LIMINE

Defendant Sprint/United Management Company ("Sprint") hereby files its Memorandum in Support of Defendant's Motion in Limine.

1. *Broad Allegations of Age Discrimination by Sprint.*

Based on the Complaint and deposition testimony in this case, Sprint anticipates that Plaintiff, her witnesses, or counsel may make conclusory allegations against Sprint of broad age discrimination. Plaintiff, her counsel, and her witnesses should be precluded from presenting any reference: to Sprint having a "pattern and practice", culture, history, or

similarly broad allegation of age discrimination, including through its Alpha rating system or staff associate program; to other age discrimination litigation against Sprint; and/or to specific allegations of discrimination against Sprint employees not similarly situated to Plaintiff.

No "pattern and practice" or disparate impact claim is included in the Pretrial Order, and therefore no "pattern and practice" or disparate impact matters are relevant to the issues in this case. *Youren v. Tintic School District,* 343 F.3d 1296, 1304 (10th Cir. 2003).

Further, any reference to alleged discrimination by any Sprint employee other than Paul Reddick is irrelevant to the issue in this case – whether Paul Reddick's decision to terminate Plaintiff's employment was because of her age. Among other things, for Sprint's treatment of other employees to be relevant to the issue of discrimination against Plaintiff, those other employees must have been "similarly situated" to Plaintiff. Employees may be similarly situated only if they had the same supervisor, and the decisions regarding their employment were made by the same decisionmakers. *Aramburu v. The Boeing Co.,* 112 F.3d 1398, 1404 (10th Cir 1997); *Trujillo v. Sanchez,* 76 F.3d 393, No. 95-2084, 1996 WL 32138 (10th Cir. Jan. 29, 1996); *Babbar v. Ebadi,* 36 F. Supp.2d 1269, 1280 (D. Kan. 1998). Allegations that employees other than Plaintiff were discriminated against thus indicate nothing about discrimination against Plaintiff if those other employees did not share the same decisionmaker with Plaintiff. *Id.*; *Schrand v. Federal Pacific Elec. Co.,* 851 F.2d 152, 156 (6th Cir. 1988).

Accordingly, Plaintiff should be precluded from presenting any reference to discrimination against employees not shown similarly situated to Plaintiff, including but not limited to Marc Elster, Doug Reinhardt, Bonnie Hoopes, John Hoopes, Patty Porter, Yvonne Wood, Sharon Miller, John Borel, Carol Kippes, Shirley Williams, Dawne Adams and/or the younger individuals who purportedly benefited from the alleged discrimination, including, David Morris, Toyiah Cavole, Rob Histe, Andy Volanakis, John Overy, Deanne Patton, Pat Paden, and Darren Collins. (*See* Exhibit A, Excerpts from deposition testimony of Plaintiff ("Plaintiff's dep."), pp. 92-93, 97-98, 101-102; Exhibit B, Excerpts from deposition testimony of Bonnie Hoopes ("B. Hoopes dep."), pp. 23-25, 58-60,109-110; Exhibit C, Excerpts from deposition testimony of Yvonne Wood ("Wood dep."), pp. 39-40, 58, 72, 108-109, 115-116; Exhibit D, Excerpts from deposition testimony of Sharon Miller ("Miller dep."), pp. 16, 18, 20, 60-61, 122-123; Exhibit E, Excerpts from deposition testimony of John Borel ("Borel dep."), pp. 18-21, 75, 99; Exhibit F, Excerpts from deposition of John Hoopes ("J. Hoopes dep."), pp. 7, 25-26, 34-35, 65-67; Exhibit G, Excerpts from deposition of Shirley Williams ("Williams dep."), pp. 67, 69, 96-97, 184). Plaintiff has no evidence that the foregoing individuals' claims of discrimination, the Alpha rating system, or the staff associate program involve discrimination by Paul Reddick. *Id.* Further, any references to such matters would require Sprint to defend itself against those references, unnecessarily complicating and lengthening the trial of this case.

Reference to such issues should thus be precluded as irrelevant. FED. R. EVID. 402. Moreover, any probative value

regarding these issues would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

2. *Conclusory Allegations and Unfounded Opinion Testimony Regarding Discrimination, Performance and Qualfications.*

Based on deposition testimony in this case, Sprint anticipates Plaintiff, her witnesses, or counsel may attempt to present allegations of discrimination supported by opinions, regarding the qualifications and performance of Sprint employees including Plaintiff, for which they have no basis in fact. For example, Plaintiff has claimed that Paul Reddick had a propensity to favor younger employees over older employees, making sure that they got "higher ratings than anybody else." (*See* Ex. A, Plaintiff's dep., pp. 156, 285-86). Plaintiff testified to examples of alleged discrimination including regarding herself, Tom Crouch, Brad Shore, John Overy, Patty Porter, Andy Volanakis, and Kevin Warner. (*See* Ex. A, Plaintiffs dep., pp. 157-58).

Plaintiff, however, admits it was just her "perception" that younger individuals were more highly rated. (*See* Ex. A, Plaintiff's dep., p. 286). Plaintiff further admits that she has no idea or responsibility regarding the performance evaluations of Crouch, Brad Shore, Kevin Warner, John Overy, or Andy Volanakis. (*See* Ex. A, Plaintiff's dep., pp. 140, 158-60). Indeed, with regard to Andy Volanakis receiving better treatment than Patty Porter, Plaintiff admitted she did not even know who made the decisions at issue, and

was basing her accusation against Paul Reddick on "rumor". (*See* Ex. A, Plaintiff's dep., pp. 160-61).

"(C)onclusory allegations without specific supporting facts lack probative value." *Conner v. Schnuck Markets, Inc.*, 906 F. Supp. 606, 614 (D. Kan. 1995), *aff'd*, 121 F.3d 1390 (10th Cir. 1997). "Mere uncorroborated hearsay or rumor does not constitute substantial evidence." *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197, 229 (1938). Moreover, an employee's evaluation of her own performance is not relevant evidence of discrimination. *Kitchen v. Burlington Northern and Santa Fe Railway Co.*, 298 F. Supp.2d 1193 (D. Kan. 2004) and cases cited therein. Accordingly, reference by Plaintiff or her witnesses to the performance of any Sprint employee, the qualifications of other Sprint employees, and/or the relative performance or qualifications of any Sprint employee should be precluded. FED. R. EVID. 402. Further, any probative value regarding these issues would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

3. *Sprint's Alpha Rating System and Staff Associate Program.*

Sprint anticipates that Plaintiff, her witnesses, or counsel may attempt to make reference to Sprint's Alpha rating system or staff associate program as having a discriminatory purpose or effect, including reference to an after-action review regarding the Alpha rating system.

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Because neither Plaintiff's Complaint nor Charge of Discrimination nor the Pretrial Order contain any reference to the Alpha rating system or staff associate program as being discriminatory, that issue is not relevant to this case. *See Youren,* 343 F.3d at 1304. Further, Plaintiff admitted she had no understanding that the purpose of the Alpha system was to discriminate, and admitted that the purpose of the staff associate program is to select potential high achievers from top schools who already have a business background. (*See* Ex. A, Plaintiff's dep., pp. 87, 245-46). Accordingly, any reference to Sprint's Alpha rating system or staff associate program as having a discriminatory purpose or effect should be precluded as irrelevant. FED. R. EVID. 402. Moreover, any references to such matters would require Sprint to defend itself against those references, unnecessarily complicating and lengthening the trial of this case. Any possible probative value in such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

4. *Elimination of High Salary Costs As Discrimination.*

Sprint anticipates that Plaintiff, her witnesses or counsel may make reference suggesting that an employment decision based on high salary costs is discriminatory. Any such suggestion would be incorrect as a matter of law and thus irrelevant to the age discrimination issues in this case. Even if high salary correlated positively with age, a termination decision based on high salary would not violate the age discrimination laws. *Hazen Paper Co. v. Biggins,* 507 U.S. 604, 611 (1993). Even Plaintiff admits that salary would be

a legitimate basis for making termination decisions during a reduction-in-force. (*See Ex.* A, Plaintiff's dep., p. 21).

Accordingly, any reference suggesting that it would be wrongful to base an employment decision on high salary cost should be precluded. Further, any probative value in such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 402-403.

5. *Age-Derogatory Remarks.*

Based on the deposition testimony in this case, Sprint anticipates that Plaintiff, her witnesses, or counsel may make reference to age-derogatory remarks by Sprint employees, including but not limited to situations involving Bennett Gamel and/or Ted Stock. However, Plaintiff admits that she never heard decisionmaker Paul Reddick, or anyone else, make any remarks which suggested a bias against older employees. (*See* Ex. A, Plaintiff's dep., pp. 159, 265). Accordingly, any reference to derogatory comments should be precluded as irrelevant, *Jones v. Unisys Corp.*, 54 F.3d 624, 632 (10th Cir. 1995), and violative of the rules against hearsay. FED. R. EVID. 801-802. Further, any possible probative value in such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

Appendix K

6. *Inconsistent Interrogatory Responses.*

Sprint anticipates that Plaintiff, her witnesses, or counsel may make reference to the fact that Sprint amended its responses to Plaintiff's Opening Interrogatories to Defendant and/or to any changes made between the original and amended response. Sprint followed the Federal Rules by serving amended responses to the written discovery, and did so before the depositions of any Sprint witnesses such that there was no prejudice to Plaintiff. FED. R. CIV. P. 26(e). Moreover, Sprint's original response remained unverified at the time it was amended, and therefore cannot constitute a valid basis on which to claim Sprint's amended responses demonstrate an inconsistent response from Sprint. Accordingly, any reference to Sprint's having amended its responses to Plaintiff's written discovery and/or to any changes between Sprint's original and amended response would be irrelevant. FED. R. EVID. 402. Further, any possible probative value in such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

7. *David and Goliath Situation.*

Plaintiff, her witnesses, and counsel should be precluded from presenting any reference suggesting that Plaintiff faces a "David and Goliath" situation in this case. Similarly, direct or indirect references to Sprint's ability to pay a judgment, ability to afford certain attorneys, the number of attorneys appearing on behalf of Sprint, the clothes or jewelry worn by counsel and staff, the nature or number of trial exhibits,

demonstrative exhibits, and other evidence, witness fees, hotel accommodations, or to any other matter promoting an inference that this is a "David and Goliath" situation should be precluded. Any such reference would be irrelevant, and any possible probative value would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 402-403.

8. *Jie Chen, Ph.D.*

Plaintiff has listed Jie Chen, Ph.D. as a potential expert witness in this case. However, Plaintiff failed to timely disclose Dr. Chen and failed to provide the disclosures and written report as required by Federal Rule of Civil Procedure 26(a)(2) for this purported expert. Accordingly, any reference to the opinions of and/or any appearance by Jie Chen, Ph.D. should be precluded. FED. R. CIV. P. 37(c); *Mounger v. Goodyear Tire & Rubber Co.*, No. 99-2230-JWL, 2000 WL 1466198 (D. Kan Sept. 22, 2000); *Nguyen v. IBP, Inc.*, 162 F.R.D. 675 (D. Kan. 1995).

9. *Hearsay Regarding E.E.O.C.'s Failure to Pursue Charge.*

Plaintiff testified during her deposition that "I was told that the EEOC was not going to pursue anything with Sprint. I was told that by the EEOC because they get no feedback from Sprint . . ." (*See* Ex. A, Plaintiff's. dep., p. 90). Any reference suggesting that the E.E.O.C. failed to pursue Plaintiff's claim because of Sprint would thus be based on inadmissible hearsay. FED. R. EVID. 801-802. Moreover, any

probative value in a reference to such an explanation would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

10. *Location of Counsel for Sprint's Residence and/or Office.*

Sprint anticipates that Plaintiff, her witnesses, or counsel may refer to the fact that counsel for Sprint is from outside Kansas and/or the Kansas City area, including by making specific mention of the fact that counsel is from St. Louis, Missouri. The location of counsel's residence and/or office is not relevant to any issue in this case, and any probative value related to the location of counsel's office and/or residence would be substantially outweighed by the danger of unfair prejudice to Sprint. Accordingly, all reference to the location of counsel's residence and/or office should be precluded as irrelevant, and because any probative value in such reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 402-403.

11. *Special Assignments as "Kiss of Death".*

Based on Plaintiff's deposition testimony, Sprint anticipates that Plaintiff, her witnesses, or counsel may suggest that special assignments are the "kiss of death" at Sprint, meaning that "Typically at Sprint when people were put on special assignments, it was very often a holding pattern for them before they were kicked out the door." (*See* Ex. A Plaintiff's. dep., p. 350). When asked for examples of this

supposedly "typical" practice, Plaintiff could name only one. (*See* Ex. A, Plaintiff's. dep., p. 351). At the same time, Plaintiff admitted to at least one counter-example in which a special assignment was not the "kiss of death." (*See* Ex. A, Plaintiff's. dep., p. 350). Any reference by Plaintiff to special assignments as the "kiss of death" or any similar reference to special assignments at Sprint should be precluded as unfounded. "Mere uncorroborated hearsay or rumor does not constitute substantial evidence." *Consolidated Edison,* 305 U.S. at 229. Moreover, any probative value in such a reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

12. *WorldCom*

Sprint anticipates that Plaintiff, her witnesses, or counsel may make reference to Sprint's expected merger with Nextel and/or past merger discussions with WorldCom. Any such reference, and any other reference to any relationship, actual or potential, between Sprint and WorldCom and/or Nextel, would be irrelevant to the issues in this case. FED. R. EVID. 402. Moreover, any probative value in such a reference would be substantially outweighed by the dangers of unfair prejudice to Sprint, confusion of the issues, misleading of the jury, and undue delay. FED. R. EVID. 403.

Appendix K

Respectfully submitted

HUSCH & EPPENBERGER, LLC

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Attorneys For Defendant Sprint/ United Management Company

APPENDIX K-1 — EXHIBIT A
EXCERPTED DEPOSITION OF
ELLEN J. MENDELSOHN
DATED APRIL 13, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF ELLEN J. MENDELSOHN

[Commencing at page 89]

* * *

Q. And it says, "The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge." Did I read that correctly?

A. Yes, you did.

* * *

Appendix K-1

[92] * * *

Q. Why is it that you believe Sprint has discriminated against other individuals?

A. There are people that I have talked to. I know that — let me back up. There are just a number of people who were let go who were good performers who were getting closer to retirement, who were older, who were singled out versus their younger counterparts, who had more experience. That would lead one to conclude that the company [93] was picking older employees versus the younger employees.

Q. Who were those people?

A. Bonnie Hoopes is one of them, John Hoopes is another. Again, there is a whole slew of people.

Q. Tell me everyone you know who fall in that category.

A. I would have some concerns, again I don't have all the details, but I found it interesting and I'll put that in quotes, that both Doug Reinhardt and Marc Elster were let go and yet their functions weren't terminated, and the people that worked for them seemed to be satisfied with them as supervisors and their work and we had not heard any rumblings about poor performance. Like I said, their jobs didn't go away and all of a sudden young graduates from the staff associate program were brought back in.

* * *

Appendix K-1

[97] * * *

Q. Let me back up because I believe you said you believe other people have been subjected to age discrimination at Sprint; correct?

A. That is correct.

Q. And you indicated there were four individuals, Bonnie Hoopes, John Hoopes, Doug Reinhardt, Marc Elster, is that right?

A. Those are the ones that come to mind right now.

Q. You can't think of anyone else as you sit here today?

A. Not that I could think of right now.

Q. But there are others; right?

A. I'm sure there are others.

Q. And do you know who supervised those others whose names you don't recall at this moment?

A. No, I do not.

Q. Do you know what their performance evaluations were?

A. No, I do not.

Appendix K-1

Q. So this claim that you believe others have been discriminated against because of their [98] age is just based on what?

A. Just based on hearsay through the company.

* * * *

APPENDIX K-2 — EXHIBIT B
EXCERPTED DEPOSITION OF
BONNIE L. HOOPES
DATED APRIL 24, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF BONNIE L. HOOPES

[Commencing at page 23]

* * *

Q. Was the senior manager of strategic initiatives the last position you held at Sprint?

A. Yes.

Q. What location did you work from as a project manager of Y2K?

A. 9221 Ward Parkway.

Appendix K-2

Q. What location did you work from as a senior manager of strategic initiatives?

[24] A. The PCS building at College and Lowell.

Q. Did you ever work out on Sprint's campus?

A. No.

Q. What was your job grade as a senior manager of strategic initiatives?

A. Seventy-nine.

Q. And I believe you've previously mentioned that at some point in time your responsibilities as a senior manager of strategic initiatives changed; is that correct?

A. That's correct.

Q. What were your responsibilities as a senior manager of strategic initiatives when you started in April of 2000?

A. I'm sorry, I can't recall at this time.

Q. What were your responsibilities after they changed as a senior manager of strategic initiatives?

A. I went into project management.

Q. When did that happen?

A. Like at the end of 2000.

Q. Can you describe to me what you mean by "project management"?

A. I had several people reporting to me that were working on projects, strategic initiatives, [25] for PCS as a whole.

Q. Did the group that you worked in as a senior manager of strategic initiatives have a name of any sort?

A. Yes, it did.

Q. What was it called?

A. The PMO.

Q. PMO is an acronym?

A. Yes.

Q. What does it stand for?

A. Project management office.

* * *

[58] * * *

Q. (By Mr. Hulla) Do you have any reason to believe your position was not eliminated when you were terminated from employment at Sprint in November of 2002?

A. Yes.

Q. Why is that?

A. I spoke with Toyiah Cavole and she told me that she was performing part of my function.

Q. What part of your function was Toyiah Cavole performing?

A. Negotiating service level agreements.

Q. Anything else?

A. Not that I recall.

Q. Negotiating service level agreements, [59] that was the only part of your responsibility as a senior manager of strategic initiatives; is that correct?

A. That's correct.

Q. And do you know if anyone performed your other responsibilities after your separation of employment from Sprint?

A. Yes.

Q. Who was that?

A. Rob Hisle.

Appendix K-2

Q. What was Rob Hisle doing after your separation of employment from Sprint that you had been doing before?

A. Working on complaints of systems down.

Q. Anything else?

A. Yes.

Q. What else?

A. There was another woman, I can't remember her name, and she was doing the rest of my duties.

Q. Okay. Do you know what the age was of the woman who was doing the rest of your duties?

A. In her thirties.

Q. Toyiah Cavole, what was her job grade at the time of your separation of employment, do you know?

[60] A. I believe it was a 74.

Q. You were 79; is that right?

A. That's right.

Q. And Rob Hisle, what was his job grade at the time of your separation of employment from Sprint?

A. He was a 77.

Appendix K-2

Q. And the woman whose name you can't recall who was responsible for the rest of your functions, what was her job grade, do you know?

A. Seventy-nine.

Q. So if I understand you correctly, your responsibilities from your position were distributing to Toyiah Cavole, Rob Hisle and an unnamed woman; is that correct?

A. That's correct.

Q. So all of your — as far as you know, all of your job responsibilities were still continuing to be performed at Sprint just by three different individuals; is that right?

A. Yes.

Q. Do you know if anybody ever came in and backfilled your position as senior manager of strategic initiative?

A. No, I don't know.

* * *

[109] * * *

Q. So you worked for Ellen Mendelsohn between 1991 and 1993; is that correct?

A. Yes.

Q. Did you ever work for Ellen Mendelsohn after 1993?

A. No, I don't believe so.

Q. Did you have occasions as part of your job responsibilities at Sprint after 1993 to interact with Ellen Mendelsohn?

A. As part of my job responsibility?

Q. Yes.

A. No.

Q. Did you ever live with Ellen Mendelsohn at any point in time?

A. No.

Q. There was a document in your personnel [110] records that includes Ellen Mendelsohn's address. I think it was listed as one of your own so that's the only reason I asked. I was just curious.

A. No.

Q. Do you know what Ellen Mendelsohn's performance feedback was in her last role at Sprint?

A. I know what she told me.

Q. What was that?

A. That it was unfavorable.

Appendix K-2

Q. Do you know who gave her that feedback?

A. I don't recall the gentleman's name.

Q. Do you know Ellen Mendelsohn's last job title at Sprint?

A. I don't recall the exact title, no.

Q. Do you know what her last job grade was at Sprint?

A. Yes.

Q. What was that?

A. Seventy-nine.

Q. Do you know what organization she worked in at Sprint?

A. I don't know what they called themselves.

* * * *

APPENDIX K-3 — EXHIBIT C
EXCERPTED DEPOSITION OF YVONNE WOOD
DATED APRIL 22, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF YVONNE WOOD

[Commencing at page 39]

* * *

Q. When were you told of your separation of employment at Sprint?

A. January 15th.

Q. What year was that?

A. 2003.

Appendix K-3

Q. Were you required to come into the office and do any work after January 15th?

A. No.

Q. Who told you that your employment with Sprint was being separated?

A. I actually knew it was happening the day before, but it wasn't official.

Q. How did you know that?

A. Someone leaked it to me.

Q. How did they leak it to you?

[40] A. They told me that I was going to be laid off the next day.

Q. Who was it that told you?

A. My supervisor.

Q. Roberta King?

A. Yes.

Q. Who told you on January 15th, 2003 that you were going to be separated from employment at Sprint?

Appendix K-3

A. Ted Stock. Ted Stock also told me on the 14th.

Q. What did Ted Stock tell you on January 14th about your separation of employment from Sprint?

A. I had given my badge to Roberta King and said I wasn't coming in the next day, after she told me I was getting laid off, but I was not resigning. So she went to Ted — this is what they told me — and he came and told me that I should come in the next day.

Q. Did you come in the next day?

A. I made an appointment with him to be laid off.

* * *

[108] * * *

Q. Previously you mentioned you were aware that Ellen Mendelsohn had raised complaints of age discrimination; is that right?

A. Yes, that's right.

Q. How were you aware of that?

A. I was told by the attorneys.

Q. Do you know Ellen Mendelsohn's last job title at Sprint?

A. No idea.

Q. Do you know what her last job period was at Sprint?

A. No idea.

Q. Do you know what organization she worked?

[109] A. No idea.

Q. Do you know who she reported to?

A. No idea.

Q. Do you know what location she worked in?

A. No.

Q. Do you know if she was exempt or nonexempt employee?

A. No idea.

Q. Do you know what her performance ratings were?

A. No, I don't.

Q. Do you know how long she worked at Sprint?

A. No, I don't.

Appendix K-3

Q. Do you know what her compensation was?

A. No.

Q. Do you know Ellen at all?

A. No.

Q. Have you ever met her?

A. Not that I know of.

Q. Have you ever spoken with her?

A. Not that I know of.

* * * *

APPENDIX K-4 — EXHIBIT D
EXCERPTED DEPOSITION OF SHARON MILLER
DATED APRIL 23, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF SHARON MILLER

[Commencing at page 16]

* * *

Q. You were laid off from Sprint in November of 1999?

A. I'm sorry, 2002, I meant 2002.

* * *

Appendix K-4

[18] * * *

Q. When did you begin working at Sprint as an employee again after Ultreya?

A. In October of 2002. I believe it was effective the first of October.

* * *

[60] * * *

Q. In October of 2002 you were hired into a tech specialist position reporting directly to Cloene Davis; is that right?

A. That's correct.

Q. What was your job grade as a tech specialist?

A. Seventy-nine.

Q. At any point in time while you worked for Sprint as an employee after October of 2002, did your job title change from anything other than a tech specialist?

A. No.

Q. Did your job grade change?

A. No.

Appendix K-4

Q. What were the responsibilities of your function as a tech specialist?

A. My responsibilities were to provide coaching and mentoring to Cloene's directors, in conjunction with Jerry Batt, the CIO's quality improvement plan, quality improvement program, and to organize efforts across her organization to [61] facilitate the implementation of changes in operations, methodologies, techniques to improve operations.

Q. Did your responsibilities include preparing a mission statement for Cloene Davis' organization?

A. Cloene's organization already had a mission statement.

Q. So is that a no?

A. Yes, it is a no. Cloene's organization already had a mission statement. We visited it upon occasion and — but it was not my responsibility to develop that, no.

Q. Did Cloene's organization have a name or title that it went by?

A. It was applications development.

Q. Who did Cloene Davis report to while she supervised your employment?

A. Jerry Batt.

Appendix K-4

Q. Do you know who Jerry Batt reported to while Cloene Davis supervised your employment?

A. I should remember that, but I don't remember the order of — the pecking order, you know, the organizational chart above Jerry. That executive level I just don't recall.

* * *

[122] * * *

Q. Do you know what Ellen Mendelsohn's job title was while she was employed at Sprint?

A. No, I don't.

Q. Did you ever have any opportunity to interact with Ellen Mendelsohn while she was employed at Sprint?

A. No.

Q. Do you know what Ellen Mendelsohn's job grade was when she was — her employment with Sprint was separated?

A. No, I don't.

Q. Do you know what organization Ellen Mendelsohn worked in?

A. No.

Appendix K-4

Q. Do you know who she reported to?

A. No.

Q. Do you know which location she worked at?

A. No.

Q. Do you know what performance ratings [123] Ms. Mendelsohn was given?

A. No.

Q. Do you know how long Ms. Mendelsohn was at Sprint?

A. No.

Q. Do you know what Ms. Mendelsohn's compensation was?

A. No.

Q. Have you ever met Ellen Mendelsohn?

A. Not that I recall. Her name doesn't — her name kind of sounds familiar, but working in a large organization, it's hard to know whether you've ever had contact. I don't recall ever having met her.

Q. While you were employed at Sprint, did your job responsibility ever require you to interact with the BD&S organization at Sprint PCS?

Appendix K-4

A. No, I'm not.

Q. Business development and strategy, does that help refresh your recollection in any way?

A. I remember that — I didn't remember the acronym, but I do remember the business development and strategies. I don't believe I ever interacted with anyone in that organization.

* * * *

APPENDIX K-5 — EXHIBIT E
EXCERPTED DEPOSITION OF JOHN BOREL
DATED APRIL 19, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF JOHN BOREL

[Commencing at page 18]

Q. Who did Janet report to in November of 2000? When I say "Janet," I mean Janet Mathis.

A. You know, we were in a bit of transition there when I first came on board. I don't think they had a director at all and I don't know who was actually — I don't know who she was reporting to to tell you the truth. I think she was even acting at some point in time as director, I don't know. They were just forming the group and, you know, it was very new and I really didn't know a whole lot about, you know, that process of transition. I just joined the team, so I had never met a director at that time.

Appendix K-5

Q. Who was Janet Mathus' supervisor at the time your employment was terminated from Sprint?

A. Mohammad Hussain.

Q. Do you recall Janet Mathis reporting to anyone other than Mohammad Hussain while you were employed at Sprint?

A. Unless there was someone early on in that process of transition, he's the one that came in and took over.

Q. Okay. Who did Mohammad Hussain report to at the time of your termination of employment?

A. Mihwa. I forget her last name. She was [19] a senior vice president of the STIC Lab.

Q. Do you know who Mihwa reported to at the time of your termination of employment?

A. I think Dennis Huber, you know, there could be layers between those two. Dennis Huber was senior vice president in charge of PCS.

Q. He was in charge of all of the PCS as far as you know?

A. He was a senior vice president within PCS. He wasn't the head guy, but he was pretty high up.

Q. Do you know who Dennis Huber would have reported to at the time of your termination of employment?

Appendix K-5

A. You know, I know I've heard the name, I don't — I really don't know.

Q. Other than Mihwa, do you know if Mohammad Hussain had reported to anyone else while you were employed at Sprint?

A. I don't think so.

Q. Prior to your termination of employment, had you applied for any other positions at Sprint?

A. Prior to my termination?

Q. Let me rephrase that. Prior to your termination of employment, had you applied for any [20] other position at Sprint between the time of your — strike that. I'm struggling, I apologize. While you were employed at Sprint, did you apply for any other role?

A. Only during my transition process after I was laid off.

Q. While you were employed by Sprint, did anybody ever tell you you could not apply for employment for other positions at Sprint?

A. I wasn't allowed to for a while, but they changed their mind.

Q. When were you not allowed to apply for other positions at Sprint?

Appendix K-5

A. Well, a week prior to me being laid off, I went to talk to Jay Cole who was the manager within our directorate who had a vacant PM position. He was wanting me to take that job and work with him and as — after I got laid off, I put in for that position and he had told me that I was not allowed to put in for this because I had been banned and that I had an adverse rating in my file.

Q. Do you remember the day that you spoke to Jay Cole?

A. It was about a week before I got laid [21] off. I got laid off on the 26th of February, 2003, so a week prior to that I guess, that time frame.

Q. Somewhere around February 19th of '03; is that correct?

A. I don't remember that exact date, but it was a weekday, it was not a weekend. I don't remember the date.

* * *

[75] * * *

Q. Mr. Borel, did you ever witness anyone being harassed at Sprint because of their age?

A. Well, yes, I have.

Q. Who was that?

A. Carol Kippes.

Appendix K-5

Q. How do you spell that?

A. K-I-P-P-E-S I think is the way to spell it. She was on the Tacordia team, Pat Baxter's team.

* * *

[99] * * *

Q. Do you know what Ellen Mendelsohn's job title was at Sprint?

A. No, I don't.

Q. Do you know what her job grade was?

A. No.

Q. Do you know which organization she worked in?

A. No.

Q. Do you know who she reported to?

A. No.

Q. Do you know which location she worked at?

A. No.

Q. Do you know what performance feedback she received?

A. No.

* * * *

APPENDIX K-6 — EXHIBIT F
EXCERPTED DEPOSITION OF JOHN E. HOOPES, JR. DATED APRIL 24, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEPOSITION OF JOHN E. HOOPES, JR.
APRIL 24, 2004

[Commencing at page 7]

Q. What was your next job after technical consultant position?

A. Technical trainer.

Q. How long were you a technical trainer?

A. It's tough to say, probably three years.

Q. What was your job after being a technical trainer?

Appendix K-6

A. Manager of technical training.

Q. How long were you a manager of technical training?

A. That again was about three years.

Q. And what was your job after manager of technical training?

A. I became a project manager, CTI for — just project manager of CTI.

Q. What does CTI stand for?

A. It stands for computer telephony integration.

Q. What was your last day of work at Sprint?

A. February — I think it's February 8th, 2002.

* * *

[25] * * *

Q. When were you told of your separation of employment from Sprint?

A. February 8th.

Q. That was 2002?

A. 2002.

Q. Did you work at any time for Sprint after February 8th, 2002?

A. No.

* * *

[26] * * *

Q. Who told you your employment with Sprint was being separated?

A. Informally I was told by my manager on the way to my director's office and formally I was told by my director.

Q. Your manager at the time was?

A. Terri Reynolds.

Q. Who was your director?

A. I don't remember, I'm sorry. I apologize, I just don't remember at this time.

Q. Did Terri Reynolds tell you why your employment with Sprint was being separated?

A. No.

Appendix K-6

Q. Did your director tell you why your employment with Sprint was being separated?

A. From what I recall, I believe he said they were downsizing.

Q. Did your director tell you why others were being retained by Sprint?

A. No.

* * *

[65] * * *

Q. Mr. Hoopes, do you know Ellen Mendelsohn?

A. Only through my wife.

Q. Have you ever met Ellen?

A. Yes.

Q. When was that?

A. Several different occasions, usually social functions that were for my wife's work at Sprint. Occasionally when I visited my wife's job, I would meet Ellen.

Q. This was while your wife worked for Mrs. Mendelsohn?

A. Well, even when she wasn't working directly for her, they were —

[66] Q. Have you spoken with Mrs. Mendelsohn regarding her claims against Sprint?

A. No.

Q. Do you know what Ellen Mendelsohn's job title was at the time her employment was separated?

A. No, I do not.

Q. Do you know what her job grade was at that time?

A. No.

Q. Do you know what organization she worked in at the time of her separation?

A. To be honest with you, no. Not to be honest with you, but honestly, no, I don't know what she —

Q. Do you know who Mrs. Mendelsohn reported to at the time of her separation of employment?

A. No, I have no knowledge of that.

Q. During your employment at Sprint, did you have an opportunity to work with Sprint PCS business development and strategy group?

A. No, not that I'm aware of.

Q. Did you ever have a chance to observe Mrs. Mendelsohn's performance as an employee of Sprint?

[67] A. No.

Q. Never your responsibility to rate her performance?

A. No.

Q. Do you know what performance feedback Mrs. Mendelsohn received while she was employed at Sprint?

A. No, I have no idea.

Q. Do you know how Mrs. Mendelsohn was compensated?

A. No, no idea.

* * * *

APPENDIX L — PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE DATED DECEMBER 20, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

Plaintiff Ellen Mendelsohn hereby files her Memorandum in Opposition to Defendant's Motion in Limine:

I. Evidence of Sprint's Similar Treatment of Other Older Employees is Admissible.

Tenth Circuit law is solidly *against* defendant. And because plaintiff cited the law in her Summary Judgment Response, *defendant knows it*. In fact, the material to follow is taken nearly verbatim from Plaintiff's Memorandum in Opposition to Summary Judgment. (*See* pp. 97-98). And yet

not one of the controlling relevant Tenth Circuit cases is cited or distinguished by Sprint.

Numerous cases recognize that the treatment of older employees other than plaintiff is relevant to a finding of pretext. *Minshall v. McGraw Hill Broadcasting Company, Inc.*, 323 F.3d 1273 (10th Cir. 2003) at 1285: "The testimony of employees, other than plaintiff, is relevant in assessing the employer's discriminatory intent if the employees' testimony can logically or reasonably be tied to the adverse employment action taken against the plaintiff." Here, Ellen Mendelsohn was terminated as part of a RIF. Just like other older, experienced employees, *younger* employees were kept, doing the same or similar duties.

The "other employees" need not work in the same department. Authority for this rule emanates from *Spulak v. K-Mart Corporation*, 894 F.2d 1150 (10th Cir. 1990), which allows evidence from other employees about the circumstances under which they left their employment *from another store.* Two employees who testified they "worked in the same state as Spulak and were fired within a very short time after Spulak left K-Mart," they were allowed to testify "although they worked under a different district manager." *Id.* at 1156-57, n. 2. Thus, employees fired in a RIF in the same general time frame should be allowed to shed light on the issue of pretext.

Spulak likewise involves a "corporate restructuring," and validates much of plaintiff's evidence.

Appendix L

Bingman v Natkin & Company, 937 F.2d 553 (10th Cir. 1991) is another ADEA case — also involving a RIF — in which the Court held that evidence very similar to Ellen Mendelsohn's was sufficient to support the verdict, including "evidence that his position was filled by a younger employee," and "**evidence concerning the makeup of the employment force and events which occurred after plaintiff's termination**. . . ." *Id.* at 556-57 (bold added). The Court held that "evidence not too remote in time that defendant terminated others in the 60-year-old age group [that plaintiff's age group] would be entirely relevant to the question of defendant's policies and practices." *Id.* at 557. The Court held, "The jury was entitled to judge the credibility of the witnesses, to resolve conflicts of evidence in plaintiff's favor, and to find that plaintiff's age was a determinative factor in defendant's decision to terminate his employment." *Id.* at 557.

In *Greene v. Safeway Stores, Inc., supra*, 98 F.3d 554, at 561, the Tenth Circuit *again* endorsed the relevance of evidence concerning the treatment of other employees within a relevant time frame. The *Greene* court quotes favorably from *Morgan v. Arkansas Gazette*, 897 F.2d 945 (8th Cir. 1990), where the Eighth Circuit affirmed an ADEA plaintiff's judgment in a case involving evidence from employees over 40 leaving the Circulation Department and being replaced by younger employees. *Greene* notes that the Eighth Circuit referred to this showing "as one thread of evidence" that led to upholding the age discrimination award, quoting as follows:

> This fact is certainly not conclusive evidence of age discrimination in itself, but it is surely the kind of fact which could cause a reasonable trier of fact to raise an eyebrow, and proceed to assess the employer's explanation for this outcome.

Quoting *Morgan*, 897 F.2d at 951, quoting *MacDissi v. Valmont Industries, Inc.*, 856 F.2d 1054, 1058 (8th Cir. 1988).

Defendant fails to acknowledge — much less try to explain away or distinguish — *Minshall*; *Spulak*; *Bingman*; *Greene*; and the Eighth Circuit case of *Morgan v. Arkansas Gazette*, 897 F.2d 945 (8th Cir. 1990), cited with approval in *Greene*. The weight, unquestionably authoritative and controlling case law cited by plaintiff belies defendant's argument that plaintiff must show the same supervisors. For one glaring example, *Spulak* endorses evidence from other employees about the circumstances under which they left their employment — **from another store.** Every witness listed by plaintiff worked at the same location as plaintiff. In *Spulak*, two employees "worked in the same state as Spulak" (as do *all* of the witnesses plaintiff has named and defendant seeks to exclude), and they were allowed to testify," even though they worked under a different district manager." 894 F.2d at 1156-57, n. 2.

It makes no difference that "pattern and practice" allegations are not included in the Pretrial Order. There is absolutely no indication that the rules stated in *Minshall*, *Spulak*, *Bingman*, or *Greene* require any pattern and practice allegations. Such allegations are not required.[1]

1. Thus, defendant's cite to *Youren v. Tintic School District*, 343 F.3d 1296 (10th Cir. 2003) about the absence of pattern and practice from the Pretrial Order has no application.

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It is wrong for the defendant to raise overly general, conclusory accusations about how defendant speculates age discrimination evidence might come in. Defendant's Motion to Prohibit Evidence from other employees terminated in Sprint's reduction-in-force under similar circumstances must be denied.

2. Plaintiff does not intend to offer "conclusory allegations and unfounded opinion testimony" regarding discrimination, performance and qualifications.

Plaintiff intends to testify concerning her **personal observations** regarding Paul Reddick, rather than offer improper opinion testimony and conclusory allegations. She must be permitted to present evidence describing what she saw and observed firsthand, regarding selections made by the defendant (particularly Reddick) in promotions, demotions, and reductions-in-force. The Court must assess this subject in the full context of the trial evidence, including how and in what context it is offered.

This is an age discrimination case. Plaintiff must be allowed proper latitude to try to prove her case, by showing how she was treated compared to other younger employees; she must be allowed to testify regarding her observations of her own workload and her personal hands-on knowledge and experience in working with certain employees. Blanket pretrial prohibitions of evidence are dangerous. *Estes v. Dick Smith Ford*, 856 F.2d 1097 (8th Cir. 1988). From all the circumstances, the jury must decide whether defendant's proffered reasons for choosing plaintiff for RIF are pretextual.

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Beaird v. Seagate Technology, Inc., 145 F.3d 1159 (10th Cir. 1998).

3. Sprint's Alpha Rating System and Staff Associate Program most certainly may be relevant and admissible.

Sprint's Alpha Rating System most certainly will be relevant as this Court recognized in the Summary Judgment Order. Improper use of the "new" Alpha Rating System, contrary to Sprint's policies and procedures on same, is one piece of evidence on the overall issue of pretext.[2]

Plaintiff does not understand defendant's argument that the Pretrial Order does not contain any reference to the Alpha Rating System or the Staff Associate Program. Many things are not included in the Pretrial Order, because they constitute "evidentiary details" which this Court's rules specifically advise should *not* be included in the Pretrial Order. It would be impossible for a plaintiff to insert into the Pretrial Order every piece of possibly relevant evidence without making the Pretrial Order overly lengthy, and virtually useless.

Plaintiff does not intend herself to offer "opinions" as to whether the Alpha Rating System or Staff Associate Program have "a discriminatory purpose or effect." (*See* Defendant's brief, at 5). To the extent facts on those subjects properly come into play in the evidence, it will be

2. *See* Order Denying Summary Judgment, at page 3 (dealing with the Alpha Rating System, among other subjects); and pages 5-6 (dealing with how the manipulations of the evaluation system constitutes one prong of the evidence going to pretext).

fact-based only. The jury must make its own conclusions as to how they view such pieces of evidence in the context of *all* evidence and inferences derived therefrom. Rule 401 defines "relevant evidence" as meaning: "[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence." Plaintiff's evidence on these subjects meets the test of Rule 401, and must be considered and weighed by the Court in the context of trial.

4. Plaintiff's salary, and her pension status, most certainly will be relevant.

Hazen Paper Co. v. Biggins, 507 U.S. 604, 113 S.Ct. 1701 (1993) notes that age discrimination "rarely is based on the sort of animus motivating some other forms of discrimination," and that, instead, it is "based in large part on stereotypes unsupported by objective fact." *Id.* at 610. Ellen Mendelsohn's case (like most) does not have "smoking gun" direct evidence admitting age discriminatory motives — nor is any expected or required. *See Denison v. Swaco Geolograph Company*, 941 F.2d 1416, 1420 (10th Cir. 1991). *Denison*, beginning at 941 F.2d 1421, endorses and approves as part of plaintiff's age discrimination claim, "**evidence indicating that the company considered the higher employment cost of older employees in deciding who to retain, thereby raising the inference that age was a direct factor in the decision to terminate him.**" 941 F.2d at 1421 (bold added). Thus, as in *Denison*, Ellen Mendelsohn's salary and the benefits to which she is entitled will be facts admissible because they are "necessary to establish the

amount of damages for the lost benefits to which [Mendelsohn] would have been entitled had she been retained by the company." *Denison, Id.* at 1422.

Plaintiff does *not* contemplate offering evidence that termination motivated by higher salary *alone* violates the age discrimination laws. But contrary to defendant's suggestion, *Hazen Paper Company* supports plaintiff on the principle of law that higher salary, coupled with pension status, may be a proxy for age "not in the sense that the ADEA makes the two factors equivalent, but in the sense that the employer may suppose a correlation between the two factors and act accordingly." *Hazen Paper Co.*, 113 S.Ct. at 1707. The Court specifically held:

> We do not preclude the possibility that an employer who targets employees with a particular pension status on the assumption that these employees are likely to be older thereby engages in age discrimination. Pension status may be a proxy for age, not in the sense that the ADEA makes the two factors equivalent, cf. *Metz*, 828 F.2d, at 1208 . . . but in the sense that the employer may suppose a correlation between the two factors and act accordingly. Nor do we rule out the possibility of dual liability under ERISA and the ADEA where the decision to fire the employee was motivated both by the employee's age and by [her] pension status.

113 S.Ct. at 1707. The narrow holding in *Hazen Paper* "is simply that an employer does not violate the ADEA just by

interfering with an older employee's pension benefits that would have vested by virtue of the employee's years of service." *Id.* at 1707-1708. In short, higher salary may be considered as a proxy for age — meaning that the employer might wrongly target higher-paid workers, on the assumption, to quote *Hazen*, "that these employees are likely to be older . . ." *Id.* at 1707.

In *James v. Sears, Roebuck & Company, Inc.*, 21 F.3d 989 (10th Cir. 1994), the Tenth Circuit affirmed a verdict for six former Sears employees, making this exact point in the second paragraph of the opinion:

> The facts before the jury presented either an ill conceived and poorly executed corporate efficiency move or **a deliberate corporate attempt to reduce payroll costs by replacing experienced and well paid workers 40 years of age or older with lesser experienced and lower paid younger workers**. The jury decided it was the latter and rendered judgment in favor of plaintiffs. (bold added).

21 F.3d at 991. *James* is decided after the *Hazen Paper* decision, and thus *James* combined with *Hazen Paper Co.* defeat defendant's motion. Plaintiff's higher salary and her pension status *are probative* evidence that must be received by the jury in the context of all the evidence.

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5. Age derogatory remarks most certainly are admissible.

This portion deserves little attention. Of course, evidence of age derogatory remarks made by upper-level management with decision making authority (Bill Blessing, Paul Reddick, or anyone else), are relevant to a finding of age discrimination and pretext. Plaintiff acknowledges that evidence of age derogatory remarks should come from someone who directly heard such remarks from a manager.

6. Plaintiff is entitled to show prior inconsistent Interrogatory Answers under the Rules of Evidence.

Plaintiff asked a straightforward interrogatory, requiring that defendant set forth all persons who had input into the decision to select Ellen Mendelsohn for termination. Sprint's interrogatory response stated: Bill Blessing, Paul Reddick, and James Fee. Only after plaintiff took the deposition of James Fee, and established that he was *not* consulted, did defendant make an effort to amend earlier erroneous responses. The fact is, plaintiff relied on what Sprint is now trying to hide behind, "unverified" answers that presumably never would have been changed or altered absent plaintiff's proving that the answer *was wrong.* It is strange that Sprint would try to hide behind the fact that it represented the interrogatories as "true and correct," only to later play "gotcha," by now saying they were "unverified," plaintiff should not have relied on them.

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Under Rule 801(d)(2), what Sprint offered (through its authorized agent/lawyer) as the interrogatory answers of Sprint qualify as an Admission by the party opponent. Such statements are not hearsay, and because they were represented by Sprint to be Sprint's own statement of fact made in a "representative capacity," and because Sprint by tendering the interrogatory "manifested an adoption or belief in its truth," then such statements are admissible at trial. Defendant, of course, is allowed to show reasons for amending the interrogatory. But such explanations simply affect the weight of the evidence, not admissibility. Sprint offers no authority whatsoever for its argument that Sprint can hide behind the fact that its offers were unverified, and that because of such apparent trickery, plaintiff somehow should be precluded from showing the inconsistent statements.

7, 8, 9: David and Goliath; Dr. Chen; EEOC's failure to pursue the Charge.

These can be handled summarily. Plaintiff will not suggest a "David and Goliath" situation. (Unless, of course, Sprint will allow plaintiff to play "Goliath" for a change). Seriously, this silliness about David & Goliath, clothes or jewelry, exhibits, hotel fees, etc. is a non-issue.

Plaintiff does not intend to call Dr. Chen, and made that clear to defense counsel previously.

As to why the EEOC did or did not pursue a Charge, plaintiff's counsel recalls that the comment from Ellen Mendelsohn that is the subject of this Motion came up in response to a question by defense counsel. So if defense

counsel opens up this subject matter, such testimony may be a fair and truthful response to the questioning. Absent that, plaintiff does not intend to affirmatively offer such evidence.

10. Location of counsel for Sprint's residence and/ or office.

In the trial of *Cami Owens v. Sprint* (tried this past October, 2004), Judge Lungstrum requited that the attorneys for both sides identify themselves. This included telling the jury where we reside, and where we office. Such harmless background details must not have had any prejudicial effect, because Sprint won the trial. Plaintiff believes it is proper during voir dire to require the lawyers to identify themselves. Short of that, however, this also is a non-issue.

11. Special Assignment as "kiss of death."

When plaintiff's counsel read this, plaintiff's counsel thought this must have been a cut and paste job from *Cami Owens v. Sprint.* In the *Owens* case, plaintiff had been put on "Special Assignment," and testified that it was considered around Sprint to be the "kiss of death." Judge Lungstrum overruled a Motion in Limine on this topic in *Owens.* Special Assignment is mentioned in paragraph 17 of the Complaint, because the two younger employees who were added to plaintiff's department after Ellen Mendelsohn was dismissed had been on "Special Assignment." Ellen Mendelsohn was asked by counsel if she was aware of that terminology, and she answered that she was and she gave her personal recollection and experience as to how Special Assignment had been the "kiss of death" for some employees at Sprint.

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Just as Judge Lungstrum denied the Motion in Limine in *Cami Owens v. Sprint*, if this topic comes up in Ellen Mendelsohn's case, the Court should reserve ruling to see how it is raised in the context at trial. Plaintiff does not believe it to be a major issue.

12. Worldcom.

Plaintiff has no intent to make reference to the expected merger with Nextel and/or the past merger discussions with Worldcom — unless it somehow becomes relevant during the trial by defendant's own actions/statements.

Respectfully submitted,

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APPENDIX M — DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS DATED DECEMBER 23, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Cause No. 03-CV-02429-KHV

ELLEN J. MENDELSOHN

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION IN LIMINE

Defendant filed its Motion in Limine regarding several matters it anticipated Plaintiff would improperly attempt to insert into the trial of this case. In response, Plaintiff filed a Memorandum in Opposition replete with unsupported arguments and misleading citations. Defendant hereby files its Reply.

Appendix M

1. *Broad Allegations of Age Discrimination/"Pattern and Practice"*

This case is about whether or not Paul Reddick made his decision to terminate Plaintiff because of her age. Accordingly, only evidence relevant to that issue is admissible. Fed. R. Evid. 402.

Applying that principle, the Tenth Circuit has repeatedly recognized that testimony regarding other alleged acts of discrimination is relevant only if it involves the same decisionmaker. *Schneider v. City and County of Denver*, No. 01-1199, 2002 WL 1938583 (10th Cir. Aug. 22, 2002) (. . . "the plaintiff must show the circumstances involving the other employees are such that their statements can 'logically or reasonably be tied to the decision to terminate' plaintiff.") (quoting *Curtis v. Oklahoma City Public Schools Bd. of Education*, 147 F.3d 1200, 1217 (10th Cir. 1998)); *Heno v. Sprint/United Management Co.*, 208 F.3d 847, 856 (10th Cir. 2000) (. . . "anecdotal evidence of discrimination should only be admitted if 'the prior incidences of alleged discrimination can somehow be tied to the employment actions disputed in the case at hand' . . . Plaintiff can meet this requirement by showing that the same supervisors were involved in prior discriminatory employment actions." (quoting *Simms v. State of Oklahoma*, 165 F.3d 1321, 1330 (10th Cir. 1999)); *Simms*, 165 F.3d at 1330 ("Mr. Simms fails to establish such a connection, for he does not link any of the parties in the current employment action . . . to the employment actions that were the subject of the Simms I litigation"). *See also* discussion, *infra*, in Issue #5.

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In her opposition, Plaintiff made several references to the recently tried case of *Owens v. Sprint*. In that case, Judge Lungstrom, following the law of the Tenth Circuit cited above, granted this nearly identical motion and precluded any and all references to discrimination against dissimilarly situated individuals. Judge Lungstrum explicitly precluded reference to individuals who did not share the same decision-maker with Plaintiff. "I will say, however, that for that to be relevant, it would in fact have to meet the criteria that would make the people similarly situated. Generally speaking, that would include the same decision-maker, and that would include employees who had similar degrees of responsibility, and so on and so forth." (*See* Exhibit A, Excerpts from Transcript of Sept. 27, 2004, In Limine Conference held before the Honorable John W. Lungstrum in the case of *Owens v. Sprint/United Management Company*, Case No. 03-2371, at pp. 56-57).

In an attempt to skirt this authority, Plaintiff has tried to piece together an argument by making unsupported conspiratorial allegations about what "defendant knows", by ignoring the overwhelming case authority, and by making misleading citations to relevant authority. In fact, the authority cited by Plaintiff stands for the opposite proposition for which it was cited. For example, the very first case cited by Plaintiff is *Minshall v. McGraw Hill Broadcasting Co., Inc.*, 323 F.3d 1273 (10th Cir. 2003). In *Minshall*, the Court explicitly approved the admission of testimony by other employees about their own alleged experience of age discrimination precisely **because** those employees were supervised and/or demoted by the exact same individual who recommended the termination of Mr. Minshall. *Id.* at 1285-

1286. Similarly, in *Spulak v. K Mart Corp.*, 894 F.2d 1150 (10th Cir. 1990), a case cited by Plaintiff because another employee with a different manager was allowed to testify, Plaintiff ignores the fact that the Court explained its decision by observing that the other employee's manager had specifically referred to the Plaintiff's early retirement as being "at K Mart's request" when encouraging the other employee to also consider retirement. *Id.* at 1156, n. 2. Plaintiff's reliance on *Greene v. Safeway Stores, Inc.*, 98 F.3d 554 (10th Cir. 1996), suffers from the same flaw. In that case, Plaintiff was terminated by the CEO. The other high-level executives permitted to testify had all also been replaced by younger individuals within months after the same CEO had assumed his new office. In *Bingman v. Natkin & Co.*, 937 F.2d 553 (10th Cir. 1991), another case cited by Plaintiff, there is not even any discussion as to who the relevant decisionmaker was.

Because the law is clear that discrimination against other employees may be relevant only if it involves the same decisionmaker involved in Plaintiff's termination and same levels of responsibility as Plaintiff, Sprint's Motion in Limine regarding broad allegations of age discrimination should be granted. Thus, Plaintiff and her counsel shouldn't be allowed to make reference to other employees unless and until such a foundation is made that the other employee is similarly situated to plaintiff.

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2. *Conclusory Allegations and Unfounded Opinion Testimony Regarding Discrimination, Performance and Qualifications*

Sprint moved in limine to preclude Plaintiff, her witnesses, and counsel from attempting to support her claims by offering opinions regarding the performance of any Sprint employee, the qualifications of other Sprint employees, and/or the relative performance or qualifications of any Sprint employee. Sprint anticipated Plaintiff might attempt to make reference to such matters because Plaintiff testified during her deposition that it was her "perception" that Paul Reddick made sure younger employees received higher ratings than younger employees, even though she also admitted she had no knowledge about the ratings given to the younger employees.

Plaintiff may testify about relevant facts of which she has first-hand knowledge. Plaintiff, and other witnesses, however, may not repeat rumors or offer speculation or make conclusory allegations. If by "observations" Plaintiff means unfounded "perception", she may not offer those either. *Conner v. Schnuck Markets, Inc.*, 906 F. Supp. 606, 614 (D. Kan. 1995), *aff'd*, 121 F.3d 1390 (10th Cir. 1997); *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197, 229 (1938). Moreover, an employee's evaluation of her own performance is not relevant evidence of discrimination. *Kitchen v. Burlington Northern and Santa Fe Railway Co.*, 298 F. Supp.2d 1193 (D. Kan. 2004) and cases cited therein. Accordingly, Sprint's Motion in Limine regarding conclusory allegations and opinion testimony regarding performance and qualifications should be granted.

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3. *Sprint's Alpha Rating System and Staff Associate Program*

To the extent it is otherwise admissible, Sprint has not objected to Plaintiff's reference to its Alpha Rating System and Staff Associate Program. Sprint, however, anticipates that Plaintiff may attempt to directly or indirectly suggest that that those programs are themselves discriminatory in purpose or effect. Although Plaintiff offers no legal support, her Opposition implies that Plaintiff intends to do just that, even if under the guise of letting the jury "make its own conclusions."

Plaintiff misses the point. This case is about whether or not Paul Reddick made his decision to terminate Plaintiff because of her age. The issue of whether the Alpha Rating System and/or Staff Associate Program are discriminatory is not part of this case. Accordingly, attempts to inject that issue into this case would be irrelevant, highly prejudicial and contrary to the agreed upon Pretrial Order.

4. *High Salary Costs and Pension Status As Discrimination*

This is an age discrimination case under the ADEA. Based on *Hazen Paper Co. v. Biggins*, 507 U.S. 604 (1993), Sprint requested an Order prohibiting Plaintiff, her witnesses, and counsel from suggesting that an employment decision based on high salary costs is discriminatory. *Hazen* and its progeny make clear that such an Order accurately reflects the applicable law.

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Federal courts addressing the issue, including the Tenth Circuit, have universally recognized that *Hazen Paper* stands for the proposition that "there is no disparate treatment under the ADEA when the factor motivating the employer is some feature other than the employee's age", even if that feature may correlate with age. *Id.* at 609. *See also Brodie v. General Chemical Corp.*, 112 F.3d 440, 442 (10th Cir. 1997) (approving jury instruction which provided that decision motivated by pure economic benefit to employer was defense to age claim) (quoting *Hazen*, 609); *Green v. Safeway Stores, Inc.*, 98 F.3d 554, 562-563 (10th Cir. 1996) (noting that *Hazen Paper* permits consideration of pension status when based on years of service); *Ellis v. United Airlines, Inc.*, 73 F.3d 999, 1007-1009 (10th Cir. 1996) ("The ADEA requires the employer to ignore an employee's age . . . it does not specify further characteristics that an employer must also ignore.") (quoting *Hazen* at 612); *Elza v. Koch Industries, Inc.*, 16 F. Supp.2d 1334, 1341 (D. Kan. 1998) ("In *Hazen*, the Supreme Court noted that discrimination based on seniority was not prohibited by the ADEA . . .").

"This rationale applies with equal force to cases where workers are discharged because of salary considerations." *Anderson v. Baxter Healthcare Corp.*, 13 F.3d 1120, 1125-1126 (7th Cir. 1994). Accordingly, "'employment decisions motivated by characteristics other than age (such as salary and pension benefits), even when such characteristics correlate with age, do not constitute age discrimination.'" *Dammen v. Unimed Medical Center*, 236 F.3d 978, 981 (8th Cir. 2001) (parenthetical in original) (quoting *Hanebrink v. Brown Shoe Co.*, 110 F.3d 644, 647 (8th Cir. 1997) (citing *Hazen Paper*)).

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In the face of this body of law, Plaintiff cites only two inapposite cases. First, Plaintiff relies heavily on *Denison v. Swaco Geolographic Co.*, 941 F.2d 1416 (10th Cir. 1991). *Denison* pre-dates the Supreme Court's decision in *Hazen Paper*, and thus does not reflect current law. Second, Plaintiff quotes from *James v. Sears, Roebuck and Co., Inc.*, 21 F.3d 989 (10th Cir. 1994), and suggests that the quote reflects a proper interpretation of the *Hazen Paper* holding. In fact: the quoted language appears only in the Court's opening description of the background facts of the case; the issue of whether cutting costs could be evidence of age discrimination is not analyzed at all; and *Hazen Paper* is never mentioned, much less interpreted, in the opinion.

Plaintiff should be precluded from suggesting that an employment decision based on any characteristic other than age, including salary or pension status, is discriminatory.

5. *Age-Derogatory Remarks*

This case is about whether or not Paul Reddick made his decision to terminate Plaintiff because of her age. Accordingly, only evidence relevant to that issue is admissible. Fed. R. Evid. 402.

Applying that principle, the Tenth Circuit has repeatedly recognized that age-derogatory comments made by someone other than the decisionmaker are not relevant evidence of discrimination. Indeed, the Tenth Circuit has specifically rejected Plaintiff's contention that a derogatory statement by any member of upper-management is thereby relevant. In *Cone v. Longmont United Hosp., Ass'n*, the plaintiff alleged

that the hospital's Chief Executive Officer made an age-derogatory comment. 14 F.3d 526, 531 (10th Cir. 1994). Finding that the comment was a "stray remark", the Court stated: "We have no evidence that Mr. Huey participated in Ms. Cone's automatic termination, and age-related comments by non-decisionmakers are not material in showing the hospital's action was based on age discrimination". *Id.*; *See also Jones v. Unisys Corp.*, 54 F.3d 624, 632 (10th Cir. 1995) ("This stray remark by someone not in a decision-making position does not establish intent to discriminate") (citing *Cone*, 14 F.3d at 531); *Palochko v. Manville Corp.*, 21 F.3d 981, 982 (10th Cir. 1994) (comment by non-decisionmaker held not evidence of age discrimination). Plaintiff cites no contrary law.

Accordingly, Sprint's motion regarding reference to age-derogatory comments made by anyone other than Paul Reddick should be granted.

6. *Amended Interrogatory Responses*

The Federal Rules of Civil Procedure permit, and even require, that interrogatory answers be amended. Fed. R. Civ. P. 26(e). The purpose of this rule would be undermined if an interrogating party could use the answering party's compliance with the rule to its tactical advantage. Further, Plaintiff has Sprint's amended answers, and may use them to the extent otherwise permitted by the rules of evidence. The fact itself that Sprint may have changed its answers is not relevant, and Plaintiff offers no explanation as to how the fact that Sprint amended an interrogatory answer might be relevant to the issues in this case. Moreover, Sprint would

be unduly prejudiced by any reference to the amendment of its interrogatory responses, and the trial of this case would become unnecessarily confused by forcing Sprint to explain the discovery process and the Rules of Civil Procedure.

Accordingly, Sprint's Motion in Limine regarding the amendment of its interrogatory responses should be granted.

7. *David and Goliath Situation*

Plaintiff apparently has no objection to Sprint's Motion in Limine regarding reference to this case being a "David and Goliath" situation, and Sprint's Motion should be granted.

8. *Jie Chen, Ph.D*

Plaintiff apparently has no objection to Sprint's Motion in Limine regarding reference to appearance by, or reference to Dr. Chen, and Sprint's Motion should be granted.

9. *E.E.O.C.'s Failure to Pursue Charge*

Plaintiff apparently has no objection to Sprint's Motion in Limine regarding reference to an alleged failure of Sprint to provide requested information as the reason the E.E.O.C. failed to pursue her Charge, and Sprint's Motion should be granted.

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10. *Location of Counsel for Sprint's Residence and/or Office*

Sprint's Motion in Limine requested that Plaintiff, her counsel, and her witnesses be precluded from referencing the location of counsel's residence and/or office. Accordingly, Plaintiff's diatribe regarding voir dire questions from the Court is not responsive.

Because Plaintiff raised the issue, Sprint responds as follows. Sprint does not believe that the location of the residence and/or office of its counsel is relevant information, and believes such information would thus serve only to prejudice the jury against Sprint because of its use of out-of-town counsel. It is obviously important for counsel to identify themselves during voir dire in order to determine whether any of the potential jurors knows counsel. However, accomplishing this purpose does not require reference to counsel's place of residence or office. A simple question asking whether anyone knows counsel or their firms would suffice. In fact, concern about relationships between the venire and counsel should be lessened, not heightened, by the fact counsel is from outside the Kansas City area.

11. *Special Assignment as "Kiss of Death"*

Sprint's Motion sought to preclude reference to special assignments as being the "kiss of death" because there is no basis for such a conclusion, and because such reference would be prejudicial. Plaintiff's Opposition first suggests that Sprint's Motion is irrelevant to this case, but then proceeds to oppose the Motion. Moreover, despite downplaying the

issue, Plaintiff mentions it in her Proposed Jury Instructions. Plaintiff's Opposition, however, fails to offer any legal basis for her objection, other than the fact that Judge Lungstrum denied a similar motion by Sprint in the *Owens* case.

In *Owens*, the plaintiff alleged that she was placed on "special assignment" as a precursor to a subsequent demotion and she further alleged that "everyone at Sprint knows that special assignment is the kiss of death." The plaintiff in this case has made no such allegation. This is merely another attempt by Plaintiff to introduce any possible negative evidence against Sprint which she can muster, regardless of whether or not it actually has anything to do with the facts of the case. Accordingly, Sprint's Motion regarding this issue should be granted.

12. *WorldCom/Nextel*

Plaintiff apparently has no objection to Sprint's Motion in Limine regarding reference to actual or potential mergers between Sprint and Nextel and/or WorldCom, and Sprint's Motion should be granted. Oddly, although Plaintiff disclaims any intent to make reference to such matters, Plaintiff's proposed voir dire questions (page 4) make explicit reference to Sprint's merger with Nextel.

Appendix M

Respectfully submitted

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APPENDIX N — DEFENDANT'S RULE 26(a)(3) FINAL WITNESS DISCLOSURES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS DATED DECEMBER 15, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S RULE 26(a)(3) FINAL WITNESS DISCLOSURES

COMES NOW Defendant Sprint/United Management Company, by and through its attorneys, and in compliance with this Court's July 29, 2004 Pretrial Order and Rule 26(a)(3)(A) and (B) of the Federal Rules of Civil Procedure, provides the following as its final witness disclosures:

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Chris Bierbaum	Consistent with his deposition testimony: • His interactions with, observations of, and discussions with Plaintiff; and • The absence of discrimination within Jim Fee's and Paul Reddick's organizations • His job duties and responsibilities within the BDS department both before and after the reorganization		X
William ("Bill") Blessing	Consistent with his deposition testimony: • Directives and efforts to reduce expenses in Sprint PCS Business Development and Strategy organization ("BDS"); • His decisions to reorganize BDS and approval of the non-discriminatory decisions to retain and separate employees;	X	

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	TO CALL	EXPECT MAY CALL
	• His interactions and discussions with Paul Reddick regarding Reddick's reports; • Reddick's assignment to, and return from, a Business to Business ("B2B") project; • The organizational structure of and distribution of responsibilities within BDS; • The job duties and responsibilities for various positions within the BDS department both before and after the reorganization; and • Succession Planning within BDS, observations made about Plaintiff and her peers during Succession Planning, and related documentation.		

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Steve Cote	Consistent with his deposition testimony: • His interactions with, observations of, and discussions with Plaintiff; • The absence of discrimination within Jim Fee's and Paul Reddick's organizations; and • His job duties and responsibilities within the BDS department both before and after the reorganization		X
Tom Crouch	• His interactions with, observations of, and discussions with Plaintiff; • The absence of discrimination within Paul Reddick's organization; and • His job duties and responsibilities within the BDS department		X

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NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
James ("Jim") Fee	Consistent with his deposition testimony: • His interactions and correspondence with Plaintiff and her peers; • Complaints he received from others about Plaintiff; • His observations and evaluations of Plaintiff's performance and behavior relative to her job requirements and peers; • Feedback he provided to Reddick regarding Plaintiff; • His reporting structure (ascending and descending) • His decision to hire Chris Bierbaum; and • Organizational changes and distribution of responsibilities within the Mobile Financial Services ("MFS") group	X	

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
A.J. Francis-Otjen	Consistent with his deposition testimony: • Her interactions with, observations of, and discussions with Plaintiff; and • The absence of discrimination within Paul Reddick's organization • Her decision against hiring Plaintiff as a director level employee		X
Leona Garrett	• Her interactions with, observations of, and discussions with Plaintiff; • The absence of discrimination within Paul Reddick's organizations; and • Her job duties and responsibilities within the BDS department both before and after the reorganization		X

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NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Debbie Law	• Her interactions with, observations of, and discussions with Plaintiff; • The absence of discrimination within Jim Fee's and Paul Reddick's organizations; and • Her job duties and responsibilities within the BDS department both before and after the reorganization		X
Dan McCauley	• The absence of discrimination within Jim Fee's and Paul Reddick's organizations; and • His job duties and responsibilities within the BDS department both before and after the reorganization		X

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Ellen Mendelsohn	• Allegations in her Complaint that she has not abandoned; • Plaintiff's employment history, including prior reductions in force and her failure to be promoted beyond the job grade she was re-hired into 13 years before her separation; • The absence of ageist remarks or animus by decision-makers; • The legitimate, non-discriminatory reasons for the reorganization and reduction in force impacting BDS; • Her contentious relationship with a co-worker; • Her search for other employment after communications from Fee about her performance;		X

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NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
	• Her job duties at the time of her separation, which were not managerial in nature; • Her failure to report concerns of age discrimination to Bill Blessing, Jim Fee, HR, or through Sprint's ethics hotline; • Her training regarding Sprint's equal employment opportunity policies and internal complaint procedures; • Her concerns about her performance being perceived as less than acceptable; and • Her efforts to find other employment, including her use of outplacement services provided by Sprint.		

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Paul Reddick	Consistent with his deposition testimony: • His interactions and correspondence with Plaintiff and her peers; • Complaints he received from other employees about Plaintiff; • His observations and evaluation of Plaintiff's performance and behavior relative to her job requirements and peers; • Feedback about Plaintiff; • His reporting structure (ascending and descending) and assignment to, and return from, a B2B project; • Directives and efforts to reduce expenses in BDS; • Decisions to reorganize BDS and MFS;	X	

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
	• The organizational structure of and distribution of responsibilities within BDS and MFS; • His non-discriminatory decisions to retain and separate employees; • Sprint's transition from, and use of, a numeric rating system to an alpha rating system; • Succession Planning within BDS, observations made about Plaintiff and her peers during Succession Planning, and related documentation; • His opinions regarding Fee's evaluation of Plaintiff and others; and • Organizational changes within BDS and MFS.		

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Ralph Reid	• His interactions and discussions with Plaintiff		X
Jo Renda	Consistent with her deposition testimony: • Organizational changes within BDS; • Plaintiff's compensation and benefits, Sprint's compensation and benefits practices, and Sprint's position control (e.g., job grades, job titles, etc.); • Sprint's equal employment opportunity policies, training, and internal complaint procedures; • Her support of BDS management as a human resources professional;	X	

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
	• Her review of management's decisions to reorganize BDS and separate and retain employees during a reduction in force and documentation regarding the same (other than privileged attorney-client communications); • Sprint's displacement guidelines; • Sprint's performance evaluation systems and related documentation; and • Sprint's Succession Planning process		
Whitney Siavelis	• The absence of discrimination within Jim Fee's and Paul Reddick's organizations; and • Her job duties and responsibilities within the BDS department both before and after the reorganization		X

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Kevin Warner	• His interactions and correspondence with Plaintiff and her peers; and • His observations and evaluation of Plaintiff's performance and behavior relative to her job requirements and peers.		X
Doug Reinhardt	• His interactions with Plaintiff; • His observations of Plaintiff and Paul Reddick; • The organizational structure of and distribution of responsibilities within BDS and MFS; • The absence of age discrimination at Sprint; and • Various job duties and responsibilities within the BDS department		X

NAME	SUBJECT MATTER/SUMMARY OF TESTIMONY	EXPECT TO CALL	MAY CALL
Witnesses Disclosed by Plaintiff	• The witnesses previously disclosed by Plaintiff pursuant to Rules 26(a)(1) and (2), and any supplementation thereto, and those witnesses disclosed by Plaintiff pursuant to Rule 26(a)(3)		X
Rebuttal and Impeachment Witnesses	• Contingent upon Plaintiff's evidence		X As needed
Custodians of Records	• Contingent upon exhibits used		X As needed

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Respectfully submitted

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Attorneys For Defendant Sprint/United Management Company

APPENDIX O — PLAINTIFF'S OBJECTIONS TO LIST OF DEFENDANT'S WITNESSES DATED DECEMBER 23, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

PLAINTIFF'S OBJECTIONS TO WITNESSES LISTED BY DEFENDANT

COMES NOW plaintiff, and pursuant to the Pretrial Order in this case, plaintiff hereby objects to the following witnesses listed by defendant:

***Tom Crouch*:** Plaintiff objects to defendant calling Tom Crouch as a witness at trial because Mr. Crouch had *no* involvement in the decision to terminate plaintiff. Mr. Crouch was *never* a supervisor of plaintiff and has *never* been identified by defendant or any of defendant's representatives as having voiced any complaint about working with plaintiff and/or plaintiff's job performance.

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Defendant has identified Mr. Crouch as potentially giving testimony of the "absence" of discrimination within Paul Reddick's organization. Defendant would be asking Mr. Crouch to give his opinion as to the absence of discrimination under Paul Reddick. This testimony is totally inadmissible at trial.

A.J. Francis-Otjen: Plaintiff objects to defendant calling A. J. Francis-Otjen as a witness at trial because Ms. Francis-Otjen had no involvement in the decision to terminate plaintiff. Ms. Francis-Otjen was *never* a supervisor of plaintiff and has *never* been identified by defendant or any of defendant's representatives as having voiced any complaint about working with plaintiff and/or plaintiff's job performance. Defendant has identified Ms. Francis-Otjen as potentially giving testimony of the "absence" of discrimination within Paul Reddick's organization. Defendant would be asking Ms. Francis-Otjen to give her opinion as to the absence of discrimination under Paul Reddick. This testimony is totally inadmissible at trial. Defendant has also identified Ms. Francis-Otjen as possibly giving testimony as to why she decided against hiring plaintiff as a director level employee. This testimony has no relevance as to defendant's reasons for choosing plaintiff for termination.

Leona Garrett

Debbie Law Plaintiff objects to defendant calling Leona Garrett and Debbie Law as witnesses at trial because these individuals are Administrative Support within the BDS organization. Neither of these individuals had any involvement in any decision as to who would be terminated,

who would stay, who would be transferred, etc. in the November, 2002 RIF. Neither of these individuals are in a supervisory position and do not make any employment decisions regarding employees. Any testimony from these individuals would be totally irrelevant to any issue in this lawsuit and inadmissible.

***Ralph Reid*:** Plaintiff objects to defendant calling Ralph Reid as a witness at trial in this case. Defendant has described Mr. Reid's potential testimony as "his interactions and discussions with plaintiff." This is so vague that plaintiff's objection is based on relevancy. Mr. Reid had no input into the decision to terminate plaintiff and was never identified by defendant as having voiced any complaint about plaintiff and/or plaintiff's performance.

THE POPHAM LAW FIRM, P.C.

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ATTORNEYS FOR PLAINTIFF

APPENDIX P — PLAINTIFFS' FINAL LIST OF POTENTIAL WITNESSES DATED DECEMBER 16, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN MENDELSOHN

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

PLAINTIFFS' FINAL LIST OF POTENTIAL WITNESSES

COMES NOW plaintiff, by and through her attorneys, and pursuant to the Pretrial Order entered in this case, plaintiff respectfully submits the attached final list of potential witnesses that may be called at trial. A copy of such witness list has also been provided to counsel for defendant by ECF filing.

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THE POPHAM LAW FIRM, P.C.

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ATTORNEYS FOR PLAINTIFFS

* * *

PLAINTIFFS' FINAL LIST OF POTENTIAL WITNESSES

WITNESSES WHOM PLAINTIFF EXPECTS TO PRESENT AT TRIAL

(EITHER IN PERSON OR BY DEPOSITION TESTIMONY)

1. Ellen J. Mendelsohn
   2712 West 141st Street
   Leawood, KS 66224

Plaintiff has knowledge of her allegations in her Complaint, including but not limited to: her employment with defendant; her job description; job performance; job duties and job responsibilities; reasons plaintiff was selected for termination; the age composition of the Business

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Development and Strategy department; Paul Reddick's preference for younger employees; Sprint's job search and hiring of younger individuals in positions for which plaintiff was qualified; and her damages.

2. James Fee - (Employee of Sprint)
   14219 Eby
   Overland Park, KS 66221

The above individual will have knowledge of plaintiff's allegations in her Complaint, including but not limited to: plaintiff's employment with defendant; plaintiff's job description; job performance; job duties and job responsibilities; the organizational structure of the Business and Development and Strategy Groups; reasons plaintiff was selected for termination; the age composition of the Business Development and Strategy department; the transferring of Chris Bierbaum into plaintiff's group just prior to plaintiff's termination; reasons why Whitney Siavelis and Dan McCauley were brought into plaintiff's group immediately after plaintiff's termination; the performance evaluation of the members of plaintiff's group and the entire department; Sprint's LINK and Alpha rating system; reasons plaintiff was not given any other Manager's position within Sprint when others within BDS were; Sprint's job search and hiring of younger individuals in positions for which plaintiff was qualified; defendant's policies and procedures; age bias comments by defendant's management toward older employees; and plaintiff's damages.

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3. Paul Reddick - (Employee of Sprint)
   8008 W. 145th
   Overland Park, KS 66223

The above individual will have knowledge of plaintiff's allegations in her Complaint, including but not limited to: plaintiff's employment with defendant; plaintiff's job description; job performance; job duties and job responsibilities; the organizational structure of the Business and Development and Strategy Groups; reasons plaintiff was selected for termination; the age composition of the Business Development and Strategy department; the transferring of Chris Bierbaum into plaintiff's group just prior to plaintiff's termination; reasons why Whitney Siavelis and Dan McCauley were brought into plaintiff's group immediately after plaintiff's termination; the performance evaluation of the members of plaintiff's group and the entire department; Sprint's LINK and Alpha rating systems; reasons plaintiff was not given any other Manager's position within Sprint when others within BDS were; Sprint's job search and hiring of younger individuals in positions for which plaintiff was qualified; defendant's policies and procedures; Sprint's Staff Associate Program; age bias comments by defendant's management toward older employees; and plaintiff's damages.

4. William Blessing - (Employee of Sprint)
   11708 Manor
   Leawood, KS 66211

The above individual will have knowledge of plaintiff's allegations in her Complaint, including but not limited to: plaintiff's employment with defendant; plaintiff's job

description; job performance; job duties and job responsibilities; the organizational structure of the Business and Development and Strategy Groups; reasons plaintiff was selected for termination; the age composition of the Business Development and Strategy department; the transferring of Chris Bierbaum into plaintiff's group just prior to plaintiff's termination; reasons why Whitney Siavelis and Dan McCauley were brought into plaintiff's group immediately after plaintiff's termination; the performance evaluation of the members of plaintiff's group and the entire department; Sprint's LINK and Alpha rating systems; reasons plaintiff was not given any other Manager's position within Sprint when others in BDS were; Sprint's job search and hiring of younger individuals in positions for which plaintiff was qualified; defendant's policies and procedures; age bias comments by defendant's management toward older employees; and plaintiff's damages.

5. Jo Renda - (Employee of Sprint)
   12872 Bradshaw St.
   Overland Park, KS

The above individual will have knowledge of plaintiff's allegations in her Complaint, including but not limited to: plaintiff's employment with defendant; plaintiff's job description; job performance; job duties and job responsibilities; Sprint's Succession Planning; Alpha Performance Rating Implementation; Forced Distribution; Displacement Guidelines; the organizational structure of the Business and Development and Strategy Groups; the age composition of the Business Development and Strategy department; reasons plaintiff was selected for termination;

reasons why Whitney Siavelis and Dan McCauley were brought into plaintiff's group immediately after plaintiff's termination; the performance evaluation of the members of plaintiff's group and the entire department; reasons plaintiff was not given any other Manager's position within Sprint when others in BDS were; Sprint's job search and hiring of younger individuals in positions for which plaintiff was qualified; defendant's policies and procedures; Sprint's Staff Associate Program; and plaintiff's damages.

6. Robert T Browne - (Former employee of Sprint-most likely by deposition)
   St. Louis, MO

The above individual will have knowledge of plaintiff's allegations in her Complaint; including but not limited to: plaintiff's employment with defendant; plaintiff's job description; job performance; job duties and job responsibilities; his job duties, responsibilities and job experience; his conversations with Paul Reddick concerning plaintiff, her job and performance evaluations; his observation about Reddick's preference for younger employees; plaintiff's job search; and plaintiff's damages.

7. Christopher Bierbaum - (Employee of Sprint)
   12440 Benson Street
   Overland Park, KS 66213

The above individual will have knowledge of plaintiff's allegations in her Complaint; his job duties, responsibilities and job experience; the reasons he was offered a position within BDS just prior to plaintiff's termination; the fact that

he is younger than plaintiff; the fact that jobs were found for other younger employees within Sprint; and plaintiff's damages.

8. Whitney Siavelis - (Employee of Sprint)
   14718 Outlook
   Overland Park, KS

The above individual will have knowledge of plaintiff's allegations in her Complaint; her job duties, responsibilities and job experience; the reasons she was offered a position within BDS after plaintiff's termination; the fact that she is younger than plaintiff; the fact that jobs were found for other younger employees within Sprint; and plaintiff's damages.

9. Steve Cote - (Employee of Sprint)
   4907 West 140th Terrace
   Overland Park, KS 66224

The above individual will have knowledge of plaintiff's allegations in her Complaint; her job duties, responsibilities and job experience; his working with plaintiff and Mike Bauerle; the fact that he is younger than plaintiff and he kept his job; the fact that jobs were found for other younger employees within Sprint; and plaintiff's damages.

10. Dan McCauley - (Employee of Sprint)
    14736 Maple
    Overland Park, KS

The above individual will have knowledge of plaintiff's allegations in her Complaint; his job duties, responsibilities

and job experience; the reasons he was offered a position within BDS just prior to plaintiff's termination; the fact that he is younger than plaintiff; the fact that jobs were found for other younger employees within Sprint; and plaintiff's damages.

11. John O. Ward, Ph.D. - Expert Witness
    8340 Mission Road, Suite 235
    Prairie Village, KS 66206

The above individual will have knowledge of plaintiff's damages.

12. David Mendelson
    2712 West 141st Street
    Leawood, KS 66224

The above individual will have knowledge of plaintiff's claims in her Complaint; and her damages.

13. Bonnie Hoopes - (Former employee of Sprint)
    1927 Goodman
    Overland Park, KS.

The above individual will have knowledge of plaintiff's allegations in her complaint, of plaintiff's job duties, and work performance; her own termination from Sprint; the fact that her job duties were assumed by three (3) younger individuals; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

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14. John Hoopes - (Former employee of Sprint)
    1927 Goodman
    Overland Park, KS.

The above individual will have knowledge of plaintiff's allegations in her complaint, of plaintiff's job duties, and work performance; his termination from Sprint; the fact that he was the only individual terminated in his department; that he was told he received an adverse Alpha rating; that his position job duties were assumed by a younger individual; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform; his applying for positions at Sprint after his termination and his not being called for even an interview.

15. Yvonne Wood - (Former employee of Sprint)
    13045 NW Ridgeview Drive
    Platte City, MO 64079

The above individual will have knowledge of plaintiff's allegations in her complaint, her termination from Sprint; defendant's treatment and opinions toward its older employees; her receipt of a copy of a spreadsheet from a supervisor that indicated that age, race and sex were considered in selection decisions; defendant's comments about older employees; Sprint's Staff Associate Program; defendant's comments about older employees; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

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16. Sharon Miller - (Former employee of Sprint)
907 SE 251 Road
Deep Water, MO 64740

The above individual will have knowledge of plaintiff's allegations in her complaint, her termination from Sprint; defendant's treatment and opinions toward its older employees; defendant's comments to her about older employees; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

17. John Borel - (Former employee of Sprint)
11208 West 121st Terr.
Overland Park, KS 66213

The above individual will have knowledge of plaintiff's allegations in her complaint, his termination from Sprint; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; the fact that he was given an adverse performance rating when he was told performance was not an issue; that a younger female was moved into his position after his termination; the fact that he was told by his supervisor that she was forced to give him a bad rating; that he could not get another job within Sprint because of the adverse performance rating; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

Appendix P

WITNESSES WHOM PLAINTIFF MAY CALL AT TRIAL

18. James Kissinger - (Employee of Sprint) -
In person or by deposition

The above individual will have knowledge that the RIF Displacement Guidelines were mandatory and were to be followed deciding who would be RIF'd and who would stay.

19. Mark Elster - (Former employee of Sprint)

He was RIF'd at age 51 from the same organization as plaintiff. He will have knowledge of plaintiff's allegations in her complaint; his termination from Sprint; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; that a younger individual was moved into his position after his termination; that he was not offered another position within Sprint; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

20. Doug Reinhardt - (Former employee of Sprint)
15790 Linden
Overland Park, KS 66224

He was RIF'd from the same organization as plaintiff. He will have knowledge of plaintiff's allegations in her complaint; his termination from Sprint; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; that a younger individual was moved into his position after his termination; that he

was not offered another position within Sprint; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

21. Shirley Williams
    5725 Lamar
    Overland Park, KS

She was RIF'd from the same organization as plaintiff. She will have knowledge of plaintiff's allegations in her complaint; her own termination from Sprint; that she is a named plaintiff in a provisional class action against Sprint for age discrimination; defendant's treatment and opinions toward its older employees; defendant's comments about older employees; that a younger individual was moved into her position after her termination; that she was not offered another position within Sprint; defendant's hiring and firing of older employees; and the transferring and hiring of younger individuals in full-time positions older individuals are qualified to perform.

22. All witnesses listed by Defendants

23. Any and all impeachment or rebuttal witnesses

24. Records custodians, should certain records other than defendant become relevant and necessary.

APPENDIX Q — DEFENDANT'S OBJECTIONS TO PLAINTIFF'S FINAL LIST OF POTENTIAL WITNESSES DATED DECEMBER 23, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-CV-02429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S OBJECTIONS TO PLAINTIFF'S FINAL LIST OF POTENTIAL WITNESSES

COMES NOW Defendant Sprint/United Management Company ("Sprint"), by and through its attorneys, and in compliance with this Court's July 29, 2004, Pretrial Order submits the following objections to Plaintiff's Final List of Potential Witnesses:

GENERAL OBJECTION

Sprint objects to Plaintiff's List of Potential Witnesses in its entirety as untimely. The Pretrial Order entered by this Court on July 29, 2004, *required* final witness disclosures pursuant to Rule 26(a)(3) to be filed "no later than 20 days

before trial." This case is set for trial on January 4, 2005. All Rule 26(a)(3) witness disclosures were thus due on December 15, 2004. Without any explanation, and without leave to file out-of-time, Plaintiff did not file her list of potential exhibits until *after* the court-ordered deadline. Accordingly, Plaintiff should be precluded from calling any witness to testify who was not properly disclosed in accordance with, or otherwise allowed by the terms of, the Pretrial Order.

SPECIFIC OBJECTIONS

In the alternative, Sprint also submits its substantive objections to the specific witnesses identified by Plaintiff on her List of Potential Witnesses as follows:

I. Plaintiff Has Improperly Listed a Previously Undisclosed Witness

As Plaintiff noted in her Motion in Limine, "Federal discovery rules (and policies) *prohibit* last-minute surprises not disclosed during discovery." (Emphasis in original, citations omitted) Nevertheless, Plaintiff curiously ambushed Sprint by waiting until the last conceivable moment (indeed, after the disclosures were due) to identify a senior Sprint executive as a possible witness in this matter. Plaintiff's Final List of Potential Witnesses includes James Kissinger, Sprint's Senior Vice President of Human Resources. Despite identifying 66 individuals in her most recent voluntary disclosures pursuant to Rule 26(a)(1), *Plaintiff did not previously disclose Mr. Kissinger as a potential witness in this matter*. (Exhibit A, Plaintiff's Second Supplement [sic] Voluntary Disclosures Pursuant to Rule 26(a)(1)).

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Pursuant to Federal Rule of Civil Procedure 37(c)(1), Plaintiff should be precluded from calling Mr. Kissinger as a witness at trial. This conclusion is warranted given the Court's stern warning against untimely disclosures in its Pretrial Order. (Court Doc. No. 64, Pretrial Order, ¶12.a) ("The parties should bear in mind that seldom should anything be included in the final Rule 26(a)(3)-disclosures that has not previously appeared in the initial Rule 26(a)(1)-disclosures or a timely Rule 26(e) supplement thereto; otherwise the witness or exhibit will probably be excluded at trial.") See also, *Mehus v. Emporia State University*, 326 F. Supp.2d 1213, 1218-19 (D. Kan. 2004) (testimony excluded under Rule 37(c)(1) because disclosure of witness and witnesses' purported testimony was untimely and requiring compliance with Rule 26); *Burton v. R.J. Reynolds Tobacco Co.*, 203 F.R.D. 636, 639 (D. Kan. 2001) (sanctioning Plaintiff for failing to make timely Rule 26(a) disclosures). Plaintiff does not bother offering a reason which would rise to the level of "justifying her excusable neglect" – presumably because no such reason exists. Furthermore, Plaintiff can not meet her burden to show her failure to disclose Mr. Kissinger is harmless. Accordingly, because of her dilatory disclosure, Plaintiff should be prohibited from calling James Kissinger as a witness at trial.

II. Plaintiff's Disclosures Include Conclusory Allegations and Unfounded Opinions

Plaintiff's witness disclosures confirm she intends to proffer testimony of conclusory allegations and unfounded opinions regarding her discrimination claim, employees' performance (including her own), and employees'

qualifications (including her own). For example, Plaintiff indicates she is expected to testify about "Paul Reddick's preference for younger employees." Plaintiff can not testify regarding another's alleged state of mind. Sprint incorporates by reference, and refers the Court to its Motion in Limine and Memorandum in Support (the "Motion in Limine") regarding the propriety of Plaintiff's expected conclusory allegations, unfounded opinions, and disclosures related thereto. For all of the reasons set forth in the Motion in Limine, Plaintiff should be prohibited from offering testimony regarding Plaintiff's and others' conclusory allegations and unfounded opinions.

III. Plaintiff's Disclosures Include Issues That Were Not Previously Raised by Plaintiff

Plaintiff's disclosures assert Jim Fee, Paul Reddick, and Bill Blessing "will have knowledge" of "age bias comments by defendant's management toward older employees." However, Plaintiff has testified she is unaware of any such alleged comments attributable to Sprint's management, including Messrs. Fee, Reddick, and Blessing. (See Exhibit A to the Motion in Limine, Plaintiff's dep., pp. 159, 265.)

Plaintiff's witness disclosures also indicate Plaintiff intends to elicit testimony regarding Sprint's Staff Associate Program and Alpha Rating System. In particular, Plaintiff implies the Staff Associate Program and the Alpha Rating System have a discriminatory purpose and effect.

Sprint incorporates by reference, and refers the Court to the Motion in Limine regarding the propriety of Plaintiff's

expected proffer of testimony regarding age-based comments, the Staff Associate Program, and the Alpha Rating System. For all of the reasons set forth in the Motion in Limine, Plaintiff should be prohibited from providing testimony regarding alleged age-based comments and an alleged discriminatory purpose or effect associated with the Staff Associate Program and the Alpha Rating System.

IV. Plaintiff Has Listed Individuals Who Are Not Similarly Situated and Know Nothing About Plaintiff and/or Her Separation of Employment From Sprint

Plaintiff has disclosed six witnesses (i.e., Bonnie Hoopes, John Hoopes, Yvonne Wood, Sharon Miller, Shirley Williams and John Borel) who are allegedly expected to testify regarding their own age-discriminatory experiences at Sprint. All six of these individuals maintain their own age discrimination claims against Sprint.[1] As detailed in the Motion in Limine, which is incorporated herein by reference, Plaintiff in this case does *not* allege Sprint engaged in a pattern and practice of age discrimination. Moreover, there is simply *no* evidence Plaintiff is similarly situated with *any* of the six individuals who are pursuing their own claims against Sprint. Finally, if these witnesses are permitted to testify, this matter will be unduly confusing to the jury and prolonged with significant rebuttal testimony regarding these

1. Shirley Williams, Sharon Miller, John Borel, and Yvonne Woods have each filed their own claims against Sprint alleging a pattern and practice of age discrimination and seeking to pursue their claims as collective actions. Bonnie Hoopes and John Hoopes have filed consents seeking to opt-into the suit filed by Shirley Williams.

individuals' terminations and additional testimony regarding the separation of others under the age of 40. For all of the reasons set forth in the Motion in Limine, and the reasons set forth above, Plaintiff should be barred from presenting testimony from witnesses who are not similarly situated with Plaintiff and who claim there was a pattern and practice of age discrimination at Sprint.

V. Plaintiff's Disclosures Fail to Adequately Identify Witnesses and Their Expected Testimony

For *every* witness listed in Plaintiff's Final List of Potential Witnesses, Plaintiff states the witness has, or will have, "knowledge of plaintiff's allegations in her Complaint, including, but not limited to: . . ." Moreover, Plaintiff "discloses" "Records custodians, should certain records other than defendant [sic] become relevant and necessary." Plaintiff does nothing to identify the additional topics, documents, or records custodians referenced in her disclosures. Plaintiff's disclosures therefore fail to provide the degree of specificity required by the Pretrial Order, which dictates the parties are to "set forth the subject matter of the expected testimony and a brief synopsis of the substance of the facts to which the witness is expected to testify." (Court Doc. No. 64, Pretrial Order, ¶12.a). Accordingly, Plaintiff should be barred from eliciting previously undisclosed subjects of testimony or calling unidentified witnesses referenced in her disclosures.

Appendix Q

CONCLUSION

For all of the foregoing reasons, Sprint respectfully objects to Plaintiff's Final List of Potential Witnesses.

Respectfully submitted,

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and

HUSCH & EPPENBERGER, LLC
By: /s/ Christine F. Miller
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APPENDIX R — PLAINTIFF'S RESPONSES TO DEFENDANT'S OBJECTIONS TO PLAINTIFF'S LIST OF POTENTIAL WITNESSES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS DATED DECEMBER 30, 2004

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

PLAINTIFF'S RESPONSES TO DEFENDANT'S OBJECTIONS TO PLAINTIFF'S LIST OF POTENTIAL WITNESSES

Plaintiff hereby files her Response to Defendant's Objections to Plaintiff's List of Potential Witnesses as follows:

Defendant's General Objection on Timeliness is Petty and Unprofessional.

As plaintiff pointed out in her Reply on Plaintiff's Motion in Limine, plaintiff filed several filings — including

her Witness List — on December 16, 2004. Defendant filed its Witness List long after business hours the night before. Plaintiff had calculated the deadlines for filings in this case the same way these same parties calculated deadlines for similar filings in a case recently tried against Sprint, *Cami Owens v. Sprint United Management*, Case No. 03-2371-JWL. This time, however, Sprint counted differently. Sprint has *not* been prejudiced in *any* way, and had time to object to Plaintiff's Witness List.

Defendant's Specific Objections

I. Defendant's objection that plaintiff has improperly listed a previously undisclosed witness is unfounded. James Kissinger, Sprint's Senior Vice President of Human Resources, was discussed throughout Jo Ella Renda's deposition that was taken in this case on February 23, 2004. Ms. Renda testified that James Kissinger was her supervisor until 2003. (Renda p. 13, line 7 - 10)

James Kissinger, in a staff meeting, told her (and others) there would be an impending reduction in 2002. (Renda p. 16, line 4 - 19) Renda went on to testify that James Kissinger was one of the individuals who authored the new LINK instructions for managers rating employees in grade 71 to 79. (Renda p. 117, line 16 - 25). There were numerous documents marked in Renda's deposition either authored by James Kissinger or received by both James Kissinger and Renda relating to the new LINK and Alpha Rating system that was to be effective in the first part of 2002. As this Court recognized in the Summary Judgment Order, improper use of the "new" Alpha Rating System, contrary to Sprint's

policies and procedures on same, is one piece of evidence on the overall issue of pretext.

Defendant has known all along that Kissinger played a large part in the Reduction-In-Force procedure that involved plaintiff, and others, even though his name was not individually listed on plaintiff's Voluntary Rule 26 Disclosures. If the court should rule that Mr. Kissinger cannot testify live at trial, then plaintiff should be allowed to read as an Admission Mr. Kissinger's testimony — given as Sprint's Rule 30(b)(6) designee — in another age case involving the RIF waves at issue here: *Williams v. Sprint*, Case No. 03-2200-JWL. Such use is expressly authorized under Rule 32 (a)(2) "for any purpose." (Fed.R.Civ.P.) Such deposition admissions also are expressly authorized under Rule 801(d)(2) to be offered as Sprint's statement of fact by Rule 30(b)(6) witness Kissinger. Finally, utter absence of any surprise or prejudice is shown by the fact plaintiff explicitly signaled the intended possible use of this deposition Admission at p. 72, fn 7 of Plaintiff's Summary Judgment Response:

> Jim Kissinger, Sprint's top HR officer, gave a Rule 30(b)(6) deposition in the *Williams* class action. There, Kissinger testified for Sprint that the RIF Displacement Guidelines are "mandatory." (Kissinger depo., 12/17/03, p. 35). Kissinger's depo. is *not* attached, since he can be called as a witness at trial in *Mendelsohn*, or his testimony can be read.

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II. Defendant objects to plaintiff's disclosures which it labels as conclusory allegations and unfounded opinions. As plaintiff stated in her Memorandum In Opposition to Defendant's Motion In Limine, Court Doc. #87, plaintiff intends to testify concerning her **personal observations** regarding Paul Reddick, rather than offer improper opinion testimony and conclusory allegations. She must be permitted to present evidence describing what she saw and observed firsthand, regarding selections made by the defendant (particularly Reddick) in promotions, demotions, and reductions-in-force. The Court must assess this subject in the full context of the trial evidence, including how and in what context it is offered.

This is an age discrimination case. Plaintiff must be allowed proper latitude to try to prove her case, by showing how she was treated compared to other younger employees; she must be allowed to testify regarding her observations of her own workload and her personal hands-on knowledge and experience in working with certain employees. Blanket pretrial prohibitions of evidence are extremely dangerous and damaging in discrimination cases, where "plaintiffs must face the difficult task of persuading the fact-finder to disbelieve an employer's account of its own motives." *Estes v. Dick Smith Ford*, 856 F.2d 1097, 1103 (8th Cir. 1988). From all the circumstances, the jury must decide whether defendant's proffered reasons for choosing plaintiff for RIF are pretextual. *Beaird v. Seagate Technology, Inc.*, 145 F.3d 1159 (10th Cir. 1998).

III. Defendant objects to plaintiff's disclosures that defendant claims were not previously raised by plaintiff.

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Defendant states that plaintiff asserts Jim Fee, Paul Reddick, and Bill Blessing "will have knowledge" of "age bias comments by defendant's management toward older employees." Defendant objects to this assertion by stating plaintiff has testified she is unaware of any such alleged comments attributable to Sprint's management. Defendant is correct that this is plaintiff's testimony, but plaintiff does not know how Jim Fee, Paul Reddick and Bill Blessing will testify until they are asked at trial.

Defendant next objects to plaintiff eliciting testimony regarding Sprint's Staff Associate Program and Alpha Rating System. As plaintiff stated in her Memorandum in Opposition to Sprint's Motion in Limine, Sprint's Alpha Rating System and Staff Associate Program most certainly may be relevant and admissible.

Sprint's Alpha Rating System most certainly will be relevant — as this Court recognized in the Summary Judgment Order. Improper use of the "new" Alpha Rating System, contrary to Sprint's policies and procedures on same, is one piece of evidence on the overall issue of pretext.[1] Plaintiff does not intend herself to offer "opinions" as to whether the Alpha Rating System or Staff Associate Program have "a discriminatory purpose or effect." (*See* Defendant's Motion In Limine, at 5). To the extent facts on those subjects properly come into play in the evidence, it will be fact-based only. The jury must make its own conclusions as to how they

1. *See* Order Denying Summary Judgment, at page 3 (dealing with the Alpha Rating System, among other subjects); and pages 5-6 (dealing with how the manipulations of the evaluation system constitutes one prong of the evidence going to pretext).

view such pieces of evidence in the context of *all* evidence and inferences derived therefrom. Rule 401 defines "relevant evidence" as meaning: "[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence." Plaintiff's evidence on these subjects meets the test of Rule 401, and must be considered and weighed by the Court in the context of trial.

IV. Defendant objects to plaintiff listing individuals whom defendant claims are not similarly situated and know nothing about plaintiff and/or her separation of employment from Sprint. As plaintiff set forth in her Opposition to Defendant's Motion in Limine, Tenth Circuit law is solidly *against* defendant. *Minshall v. McGraw Mill Broadcasting Company, Inc.*, 323 F.3d 1273 (10th Cir. 2003) at 1285; *Spulak v. K-Mart Corporation*, 894 F.2d 1150 (10th Cir. 1990); *Bingman v. Natkin & Company*, 937 F.2d 553 (10th Cir. 1991); *Greene v. Safeway Stores, Inc., supra*, 98 F.3d 554, at 561. Plaintiff worked in Business Development, which is a department within the Sprint PCS division. Exhibits 3 and 4 which are Succession Planning documents are entitled "PCS Succession Planning." Plaintiff listed witnesses who also worked in Sprint PCS and were terminated in the same time-frame as she was, also as part of a RIF. For the reasons stated in plaintiff's Opposition to Defendant's Motion In Limine, defendant's objections to prohibiting evidence from other employees terminated in Sprint's PCS reduction-in-force under similar circumstances as plaintiff must be denied. See also *Estes*, supra, (evidence showing "history and work practices" probative of a climate of age and race discrimination must be admitted); *Phillips v. ANR Freight*,

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945 F.2d 1054, 1056-57 (8th Cir. 1991) (Other complaints of age discrimination should have been "freely admitted at trial.")

V. Defendant objects by stating plaintiff's disclosures fail to adequately identify witnesses and their expected testimony. Defendant points out that plaintiff listed as a potential witness: "records custodians, should certain records other than defendant become relevant and necessary." This listing is for rebuttal and/or impeachment purposes only. Therefore, plaintiff cannot contemplate the subject matter of the expected testimony or provide a brief synopsis of the substance of the facts to which the witness is expected to testify, until such time rebuttal and/or impeachment of defendant's witnesses would be necessary.

WHEREFORE, for the foregoing reasons, defendant's objections to Plaintiff's Final List of Potential Witnesses should be denied.

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APPENDIX S — EXCERPTS FROM TRIAL TRANSCRIPT DATED JANUARY 4, 2005

* * *

MR. MONAFO: YOUR HONOR, EXHIBIT 4 IS A COMPILATION OF VARIOUS DIFFERENT DOCUMENTS. I THINK WE -- I DON'T THINK IT CAN BE TAKEN AS A BIG GROUP OF EXHIBITS LIKE THIS. SO I WOULD HAVE AN OBJECTION TO -- THERE'S SOME SPREADSHEETS IN HERE THAT HAVE INFORMATION, FOR EXAMPLE, THAT WOULD BE BARRED UNDER SOME OF THE PRETRIAL ORDERS. IF HE'S GOT A PARTICULAR DOCUMENT --

MR. EGAN: I DON'T KNOW WHAT HE'S TALKING ABOUT ITS BARRED BY THE PRETRIAL ORDER.

MR. MONAFO: IT APPEARS TO BE.

ME. EGAN: MAY WE APPROACH?

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD BETWEEN COURT AND COUNSEL AT THE BENCH OUTSIDE THE HEARING OF THE JURY:)

MR. MONAFO: YOUR HONOR, THE OBJECTION IS EXHIBIT 4 IS A GROUP OF DOCUMENTS THAT SOME OF THEM ARE SUCCESSION PLANNING, SOME OF THEM ARE ACTUALLY FROM THE RIF. IT'S A COMPILATION OF VARIOUS THINGS. THERE'S SOME SPREADSHEETS IN HERE THAT CONTAIN DATES OF BIRTH, FOR EXAMPLE, RACE, AGE OF PEOPLE WHO I THINK, BY VIRTUE OF THE PRETRIAL ORDER -- OR

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EXCUSE ME, THE MOTION IN LIMINE ORDER, THEY'RE NOT SIMILARLY SITUATED.

IF THEY COME INTO EVIDENCE THE JURY COULD HAVE THEM BACK IN DELIBERATIONS AND THEY WOULD BE CONSIDERING AGES AND THINGS OF THAT NATURE THAT THEY SHOULDN'T EVEN CONSIDER. SO THAT'S ONE OF THE MY CONCERNS, CERTAINLY ON THE SPREADSHEET.

BUT THEY SAID THERE'S A GROUP -- THIS IS A GROUP OF DOCUMENTS THAT DIFFERENT PEOPLE CREATED SO I THINK THE FOUNDATION NEEDS TO BE LAID THROUGH DIFFERENT WITNESSES.

MR. EGAN: YOUR HONOR, MY --

THE COURT: FIRST OF ALL, I DON'T THINK THAT I EVER RULED THAT THE JURY CAN'T KNOW ANY AGES OR RACES OR NAMES OF OTHER PEOPLE.

MR. MONAFO: CORRECT.

THE COURT: SO WHAT THE MOTION IN LIMINE GOES TO IS THE ARGUMENT THAT THE PLAINTIFF MAY ARGUE AS TO ADVERSE TREATMENT OF THESE OTHER PEOPLE BECAUSE OF THEIR AGE. SO AS LONG AS THIS IS JUST GOING IN AS BACKGROUND INFORMATION, I DON'T SEE WHAT CONCEIVABLE INFERENCE THE JURY CAN DRAW FROM IT. THAT'S NUMBER ONE.

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NUMBER TWO, I THINK YOU ALL STIPULATED THEY'RE BUSINESS RECORDS AND THEY'RE ADMISSIBLE SUBJECT TO -- ONLY TO OBJECTIONS AS TO RELEVANCE

MR. EGAN: YES, YOUR HONOR.

THE COURT: I BELIEVE THAT'S IN THE PRETRIAL ORDER. SO IF YOUR OBJECTION JUST GOES TO FOUNDATION --

MR. MONAFO: WELL, YOUR HONOR, I THINK THE MAIN THING THAT CAUGHT MY EYE IN THE SPREADSHEETS IS THAT THEY'VE GOT -- THERE IS VARIOUS ORGANIZATIONAL CHARTS THAT IF THE JURY LOOKED AT -- THEY HAD ALL THIS BACK IN THE ROOM, THEY WOULD BE ABLE TO PIECE TOGETHER THAT SOMEBODY WAS PART OF THE RIF AND GET THEIR AGES AND SOMEBODY WHO PAUL REDDICK HAD NO DECISION-MAKING AUTHORITY OVER. THAT'S MY CONCERN.

MR. EGAN: YOUR HONOR, MAYBE WE BETTER VISIT ABOUT THAT. YOU KNOW, AS YOU RECOGNIZED IN YOUR ORDER, THE DECISIONS TO MAKE THE RIFS IN THE BDS ORGANIZATION WERE MADE BY BLESSING AND REDDICK AND THAT IS THE FACT.

AS FAR AS MY BEING ABLE TO BRING IN OTHER EMPLOYEES TO TESTIFY AS TO HOW THEY WERE TREATED, YOUR RULING CLEARLY SAYS THEY

WOULD HAVE TO HAVE BEEN SUPERVISED BY PAUL REDDICK, SO I UNDERSTAND THAT ASPECT OF IT. JUST SO THE COURT'S AWARE, THESE DOCUMENTS ARE ALL WERE USED BY HR, THEY WERE DOCUMENTS, AS SHE'S TESTIFIED, THAT WERE USED AS TOOLS TO DECIDE HOW THEY MAKE THE CUTS.

WE'VE ALREADY HEARD FROM MS. MILLER IN OPENING STATEMENT THAT OTHER PEOPLE LOST THEIR JOBS FROM BDS, SO IT'S CERTAINLY, YOU KNOW, PART OF THE EVIDENCE IN THIS CASE THAT I EXPECT THE DEFENDANT WOULD WANT TO USE THAT OTHER PEOPLE RECEIVED RIFS AND SO THEY JUST -- YOU KNOW, THEY DON'T GET TO AVOID THE FACT THAT THIS IS AN AGE CASE, THIS IS ALL THEIR DOCUMENTS THAT WERE USED DURING THE RIFS AS THE TOOLS TO GET DOWN TO THE CUTS THAT WERE MADE. IT'S ALL RELEVANT TO THIS CASE.

THE COURT: IS IT ONE, A SINGLE DOCUMENT, OR HAVE YOU PUT TOGETHER A GROUP OF DOCUMENTS?

MR. EGAN: WE MARKED THEM AS THEY WERE PRODUCED TO US. IT'S A SERIES OF DOCUMENTS THAT ALL OF THEM RELATE TO THIS BDS GROUP. MANY OF THEM RELATE TO SUCH THINGS AS -- AND THEY'VE BEEN MIXED TOGETHER. YOU KNOW HOW IT IS SOMETIMES IN THESE CASES, THEY'RE -- YOU KNOW, THE DEFENDANT -- I'M NOT CRITICAL, BUT IT'S JUST THE WAY IT'S PRODUCED TO US. SO WE

WANTED TO AVOID PUTTING IT IN OUT OF ORDER SO WE MARKED THEM THAT WAY AND WILL ASK WITNESSES ABOUT THEM, EVERY ONE OF THEM HAS BEEN -- YEAH.

MR. MONAFO: THERE'S NO DISPUTE ABOUT THAT.

MR. EGAN: WELL, I MEAN THE POINT IS THEY'RE PRODUCED AS SPRINT 435 THROUGH 467, ET CETERA, THERE'S ORGANIZATIONAL CHARTS THAT WILL BE RELEVANT FOR VARIOUS WITNESSES. THEY'RE ALL GOING TO COME IN AS UNCONDITIONALLY RELEVANT BECAUSE MOST OF THESE HAVE HANDWRITING BY BILL BLESSING THAT JO RENDA WORKED WITH HIM ON THE CUTS THAT ARE MADE. SO, YES, I APOLOGIZE THAT THEY ARE, UNFORTUNATELY, A GROUP OF DOCUMENTS.

THE COURT: WHY DON'T YOU OFFER THEM LIKE BREAK IT DOWN TO DISCRETE DOCUMENTS, HAVE IT MARKED DOWN TO 4A, 4B, 4C AND DEAL WITH THEM ONE BY ONE.

MR. EGAN: I CAN TRY. IT JUST TAKES LONGER TO DO. I'M TRYING TO BE -- I WANT TO USE THE WORD EFFICIENT.

THE COURT: IF THESE ARE ALL COMING IN --

MS. MILLER: I DON'T HAVE ANY INTENTION TO FORCE HIM TO DO SOMETHING THAT'S GOING TO MAKE IT INEFFICIENT. IF THIS ALL JUST CAME IN,

THERE ARE A BUNCH OF PEOPLE ON THESE LISTS THAT REDDICK HAD NOTHING TO DO WITH. THEY WERE PART OF THE RIF. AND IF THEY HAD ALL THIS INFORMATION, MY CONCERN IS IT WOULD BE BACK THERE, THEY'LL GO GET ALL THE INFORMATION THAT THE ORDER DID EXCLUDE.

MR. EGAN: I FULLY AGREE IF WE LET THIS COME IN THEY'RE GOING TO GET A BUNCH OF NAMES OR A BUNCH OF DIFFERENT PEOPLE, BUT NOT PEOPLE WHO ARE NOT SIMILARLY SITUATED. THEY ARE NOT GOING TO BE THE DISCRIMINATED. YOU'RE THE ONE THAT'S SAYING IT'S A RIF AND YOU'RE SAYING IT'S A LEGITIMATE, NONDISCRIMINATORY RIF. SO I DON'T SEE HOW YOU CAN POSSIBLY PROVE THAT IF YOU ONLY LET IN EVIDENCE -- THE RIF AFFECTED MORE THAN THE PEOPLE IN PLAINTIFF'S GROUP.

MR. MONAFO: ABSOLUTELY.

THE COURT: SO YOU CAN'T HAVE IT BOTH WAYS.

MR. MONAFO: I WAS TRYING TO DRAW THE LINE IS JUST THAT, YES, THERE WAS A RIF. YES, IT WAS BIGGER THAN HER GROUP, IT WAS THE WHOLE PCS BUSINESS UNIT. BUT WE'RE NOT GOING TO GO THROUGH THE DEMOGRAPHICS OF EVERYBODY IN THE PCS BUSINESS UNIT. WE'RE GOING -- ONLY GOING TO FOCUS -- HONE IN ON PAUL REDDICK, THAT WAS MY UNDERSTANDING OF THE MOTION

IN LIMINE ORDER. THE ONLY PEOPLE THAT PLAINTIFF CAN COMPARE HERSELF TO ARE THE PEOPLE WHO SHE WAS SIMILARLY SITUATED TO.

MR. EGAN: YOUR HONOR, I DO NOT UNDERSTAND THAT TO BE THE COURT'S RULING. WHAT THE DEFENDANT WANTED US TO DO WAS KEEP OTHER EMPLOYEES FROM OTHER AREAS, NOT THE BDS GROUP. FOR INSTANCE, THERE'S A GENTLEMAN NAMED MARC ELSTER AND WE COVERED ALL THIS IN THE SUMMARY JUDGMENT ORDER. HE WAS 51, HE WAS TERMINATED BY BLESSING AS PART OF THIS. THERE'S REINHARDT, THERE'S VARIOUS PEOPLE. OF COURSE, THEY USE IT AS TOOLS, THAT'S THE WAY THEY GOT DOWN TO THE CUTS. THAT'S SOMETHING THAT THE JURY HAS A RIGHT TO KNOW AND PIECE TOGETHER.

AND I'M SURE THEY WILL ATTACK ELLEN MENDELSOHN, SHE'S A BAD PERFORMER, WE THINK IT'S AGE, WE HAVE TO BE ABLE TO SHOW WHAT THE COMPARATIVE AGES ARE. I CAN TRY AND PIECE IT TOGETHER, BUT HONESTLY IT IS TOUGHER TO DO. I WILL DO MY BEST TO DO IT AS I GO THROUGH WITH THIS WITNESS.

MR. MONAFO: WELL, IF -- LIKE I SAID, MY MAJOR CONCERN -- REALLY MY OBJECTION IS TO THE SPREADSHEET.

MR. EGAN: I AM GOING TO ASK HER ABOUT THE SPREADSHEETS. THEY ARE SPECIFIC ABSOLUTE TOOLS THAT SHE USED.

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MR. MONAFO: PUTTING THAT ACTUAL SPREADSHEET INTO EVIDENCE WITH THE AGES ON THERE OF PEOPLE WHO ARE NOT SIMILARLY SITUATED, THAT'S MY --

MR. EGAN: SPRINT HAS DOCUMENTS THAT SHOW AGES IN AN AGE CASE. THE FACT THAT SPRINT SHOWS AGES IN AN AGE CASE IS RELEVANT IN ITSELF. WE CAN TALK TO THE WITNESS AND I'LL DRAW OUT FROM HER HOW IT WAS USED, BUT DOCUMENTS SHOWING INDIVIDUALS AND DEMOGRAPHIC INFORMATION IS ABSOLUTELY RELEVANT.

MR. MONAFO: AND JUST TO UNDERSTAND, I DON'T OBJECT, I KNOW I INTEND TO BRING IT OUT MYSELF, BUT SHE HAD SPREADSHEETS WITH THE PEOPLE'S AGES ON IT, HOW ELSE COULD SHE DO HER JOB? BUT MY OBJECTION IS THE PEOPLE SHOULD NOT LEARN THE ACTUAL AGES OF A BUNCH OF PEOPLE WHO ARE NOT SIMILARLY SITUATED TO THE PLAINTIFF. I THINK ONLY THE PEOPLE WHO WERE SIMILARLY SITUATED, THOSE ARE THE AGES OF THE RELEVANCE.

THE COURT: I THINK WE'RE GOING TO NEED TO DEAL WITH THIS ON AN EXHIBIT-BY-EXHIBIT BASIS, BUT I THINK YOU MAY BE OVEROPTIMISTIC IN SAYING YOU'RE GOING TO ELICIT TESTIMONY THAT AGE WAS PART OF WHAT THEY COULD CONSIDER, BUT NOT LET THE JURY SEE THE DOCUMENTS THAT OUTLINE WHAT THE AGES ARE.

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I THINK MAYBE YOU'RE BEING A LITTLE OVERSENSITIVE TO SOME OF THIS EVIDENCE BECAUSE THE JURY -- IT'S -- I BELIEVE IT'S CLEAR TO THE JURY NOW, IF IT'S NOT CLEAR NOW, IT CERTAINLY WILL BE CLEAR AT THE END OF THE CASE, THAT THEY'RE ONLY CALLED UPON TO EVALUATE WHETHER SPRINT DISCRIMINATED AGAINST THIS PLAINTIFF AND PLAINTIFF WILL ONLY BE ALLOWED TO ARGUE. IF THERE'S ARGUMENT, ABOUT HOW OTHER EMPLOYEES WERE TREATED, THAT THEY HAVE TO BE EMPLOYEES WHO WERE SIMILARLY SITUATED SUBJECT, TO THE SAME DECISION-MAKER AND THE SAME RIF. I DON'T BELIEVE THAT I CAN SAY ANYTHING ELSE AT THIS POINT.

* * *

ME. EGAN: YOUR HONOR, BECAUSE I JUST WANT THIS TO GO SMOOTHER THAN IT DID YESTERDAY, I'M GOING TO MAKE ANOTHER SHOT AT EXHIBIT 4.

THE COURT: OKAY.

MR. EGAN: AND MAYBE JUST EXPLAIN A LITTLE BIT WHERE I WANT TO GO WITH THAT SO THAT YOU KNOW AS THIS COMES UP. EXHIBIT NUMBER 4 HAS BEEN IDENTIFIED IN DISCUSSIONS BETWEEN ME AND MR. MONAFO AS BEING MISS RENDA'S FILE. THAT'S HOW IT'S BEEN DESCRIBED TO ME, JIM. IS

THERE ANY DISTINCTION THAT YOU KNOW OF FROM THAT?

MR. MONAFO: THAT'S FINE.

MR. EGAN: OKAY. SO IT'S GOT DOCUMENTS IN THERE THAT SHE USED IN CONDUCTING HER HR HELP AND COUNSEL OF BDS IN THE ENTIRETY OF THIS RIF. IT'S ALL HER STUFF THAT SHE HAD. IT IS RELEVANT TO THE CASE. I WOULD LIKE TO BE ABLE TO OFFER IT IN EVIDENCE AND I WILL GO THROUGH EACH PAGE THAT HAS HER HANDWRITING ON IT, THE EXCEL SPREADSHEETS THAT SHE USED AS A TOOL TO HELP HER AS SHE'S HAVING ONGOING DISCUSSIONS, SHE'S TESTIFIED, WITH BLESSING AND REDDICK BOTH, THAT IT'S BLESSING'S ORGANIZATION, THAT IT HAS TO BE CUT AND THAT HE AND REDDICK, BECAUSE BLESSING DELEGATED SOME AUTHORITY TO REDDICK, ARE DOING THESE CUTS.

SO I WOULD LIKE TO BE ABLE TO USE THESE DOCUMENTS WITHOUT STOPPING IN EACH ONE AND SAYING, THIS IS 4C OR 4F OR -- BECAUSE I'M GOING TO JUMP BACK AND FORTH A LITTLE BIT AND THE RECORD IS GOING TO GET KIND OF CRAZY. IT'S ALL RELEVANT.

IN OPENING STATEMENT MS. MILLER SAYS THAT PAUL REDDICK LOOKED AT THE ENTIRE

ORGANIZATION, THE ENTIRE ORGANIZATION HAS RIFS, WE'VE ALWAYS UNDERSTOOD THAT'S PART OF THIS CASE THE BACKGROUND OF THIS CASE. SO I WOULD LIKE TO BE ABLE TO OFFER EXHIBIT 4 IN EVIDENCE, GO OVER THE DOCUMENTS WITH HER. SHE EXPLAINS ALMOST EVERYTHING, BUT IT'S ALL RELEVANT TO THE CASE.

THE COURT: OKAY.

MR. MONAFO: AND, YOUR HONOR, MY OBJECTION REALLY WAS TO ONE DOCUMENT IN THERE, WHICH IS THE SPREADSHEET AND I -- I DON'T CARE THAT -- THE EVIDENCE OF THE SPREADSHEET I THINK IS FINE. REALLY IT SHOULD JUST BE REDACTED TO TAKE THE AGES OFF THIS -- OFF THE SPREADSHEET IF THEY WANT TO ACTUALLY ENTER IT INTO EVIDENCE.

THE OBJECTION THAT I STATED YESTERDAY WAS THAT IN ORDER TO COMPLY WITH THE MOTION IN LIMINE ORDER, IT'S MY UNDERSTANDING THAT WE'RE ONLY TALKING ABOUT PAUL REDDICK'S DECISIONS. AND PLAINTIFF IS ONLY ENTITLED TO PROVE DISCRIMINATION BY LOOKING AT OTHER EMPLOYEES WHO WERE SIMILARLY SITUATED WITH HER. THE SPREADSHEET CONTAINS NUMEROUS PEOPLE WHO WERE NOT SIMILARLY SITUATED TO HER.

AND IF IT GOES INTO EVIDENCE WITH THE ORG CHARTS, THE JURY WILL HAVE ALL THE

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INFORMATION THEY NEED TO DRAW INAPPROPRIATE CONCLUSIONS ABOUT THE RIF.

THE COURT: WHY CAN'T WE JUST TAKE CARE OF THIS BY TELLING THE JURY THAT THERE'S NO CLAIM IN THIS CASE THAT THE RIF ITSELF WAS INHERENTLY DISCRIMINATORY ON THE BASIS OF AGE AND THAT THEY SHOULDN'T DRAW ANY INFERENCE -- THEY SHOULDN'T TRY AND MAKE ANY CALCULATIONS, DRAW ANY INFERENCE FROM THE AGES WHICH ARE REFLECTED ON THAT SPREADSHEET BECAUSE THAT'S NOT PART OF THE ISSUES IN THIS CASE.

MR. MONAFO: I THINK THE SAFER WAY TO DO IT WOULD BE TO MAKE SURE THEY DON'T EVEN GET THE AGE INFORMATION OF THE PEOPLE WHO WERE NOT IN PAUL REDDICK'S WORLD. THAT, TO ME, WOULD BE THE SAFE WAY TO DRAW THE LINE. THESE PEOPLE WERE NOT IN REDDICK'S ORGANIZATION, THEY'RE NOT SIMILARLY SITUATED. THEIR AGES ARE NOT RELEVANT, THEREFORE, TO ANY ISSUES IN THIS CASE.

THERE COULD BE NO CONCEIVABLE WAY THE AGE COULD BE RELEVANT OTHER THAN TO SHOW DISCRIMINATION. AND THAT'S OUR CONCERN. OUR CONCERN IS THAT IF THE AGES COME IN, THEN THE JURY -- IT'S GOING TO BE A NATURAL INCLINATION FOR THEM TO TRY TO DRAW THEIR OWN CONCLUSIONS BACK THERE THAT -- I DON'T THINK

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THE INSTRUCTION FROM THE COURT WOULD PROTECT SPRINT'S RIGHTS SUFFICIENTLY, SO I GUESS THAT WOULD BE MY CONCERN.

THE COURT: I DON'T THINK IT'S REASONABLE TO ASSUME THAT THE COURT WILL DISREGARD OR THAT THE JURY WILL DISREGARD THE COURT'S INSTRUCTIONS. BUT MR. EGAN?

MR. EGAN: YES, YOUR HONOR.

THE COURT: EXCUSE ME. FRANKLY, I HAVE A PROBLEM WITH GOING IN AND REDACTING A LOT OF DOCUMENTS BECAUSE IT FOCUSES THE JURY'S ATTENTION ON EXACTLY WHAT YOU'RE TRYING TO GET THE JURY TO DISREGARD AND I DON'T THINK THAT'S A VERY SMART WAY OF APPROACHING IT.

MR. MONAFO: YEAH, OUR OBJECTION IS SIMPLY TO THE SPREADSHEET, SO THE REST OF THE EXHIBIT --

THE COURT: I UNDERSTAND, BUT YOU WOULD HAVE TO GO INTO THAT SPREADSHEET AND DRAW A BLACK MAGIC MARKER THROUGH EVERY PLACE THAT SHOWS AN AGE, WHICH IS GOING TO MAKE THE JURY LOOK AT THAT AND GO, WHAT IS IT THAT THEY'RE TRYING TO KEEP US FROM FINDING OUT? AND SO THEN IF I SAY THAT'S NOT PART OF THE ISSUES IN THE CASE, THEN THEY'RE SUSPICIOUS ABOUT MY INSTRUCTION.

MR, EGAN?

MR. EGAN: YES, YOUR HONOR. JUST SOME MORE OBSERVATIONS ABOUT THAT. IN THIS CASE THE DEFENDANT -- AND I DON'T MEAN TO POINT FINGERS. THIS IS THE RESULT OF THE ADVOCACY AND ADVERSARY PROCESS. THE DEFENDANT WANTS TO TAKE THE FACTS OF THE CASE AS THEY DEVELOP THE RIF AND THEN SIMPLY REDACT THINGS OUT WHEN INDEED THIS IS AN AGE DISCRIMINATION CASE.

WE HAVE HAD TESTIMONY SO FAR FROM MISS RENDA THAT I ASKED WHO WOULD BE THE INCUMBENTS THAT SHE'S COMPARED WITH? WELL, SHE HAS ALREADY STATED WHAT I BELIEVE TO BE TRUE AND THAT WOULD BE SHE COULD BE COMPARED WITH ALL INCUBATOR GROUPS. AND THAT IS -- SHE IS RIGHT ABOUT THAT. IN OTHER WORDS, IT'S NOT JUST THAT REDDICK MAKE DECISIONS, REDDICK MADE DECISIONS THAT AFFECT AND RESULTED IN MISS MENDELSOHN LOSING HER JOB.

SO DID BILL BLESSING IN CONJUNCTION WITH HIM, BUT IT'S THE CUTS OF THE ORGANIZATION. SHE HAD THE OPTION TO FIND OTHER JOBS. THEY HAVE THE OPTION TO FIND JOBS FOR HER. THE AGES OF PEOPLE WHO KEPT JOBS IS RELEVANT AS PART OF THE OVERALL CONTEXT OF THIS AGE DISCRIMINATION CASE.

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NOT THAT THE JURY IS GOING TO GO -- I MEAN, I THINK REALLY THEY SHOULD BE ALLOWED TO SEE WHAT SPRINT USED AS THE TOOLS AS THEY'RE GOING THROUGH THIS, PARTICULARLY THE HR FOLKS WHO, PURSUANT TO THE DISPLACEMENT GUIDELINES, ARE TO REVIEW THE PLANNED DISPLACEMENTS AND DO A DISPARATE IMPACT ANALYSIS. THAT'S IN EVIDENCE.

I'M SIMPLY TRYING TO PROVIDE THE CONTEXT FOR THE JURY. I'M NOT EVEN SURE THAT YOU NEED A LIMITING INSTRUCTION BECAUSE IT MAY OVERLY RESTRICT WHAT THE CONTEXT AND THE TOTALITY OF THE RELEVANT CIRCUMSTANCES IS IN THIS AGE CASE. BUT, YOU KNOW, AS A FALL-BACK POSITION, IF THERE IS SOME KIND OF REASONABLE LIMITING INSTRUCTION, YOU KNOW, I CERTAINLY WOULD CONSIDER IT.

BUT I REALLY DON'T THINK IT'S NECESSARY. IT'S JUST THAT THE DEFENDANT WANTS TO NOW TRY AND CONSTRICT AND TAKE YOUR ORDER AND CONTORT IT FAR BEYOND WHAT I THINK WAS INTENDED. IT WAS BASED ON IF WE WERE GOING TO CALL OTHER EMPLOYEES WHO WERE CLAIMING HOW THEY WERE TREATED DISCRIMINATORILY. AND YOU SAID NO THEY SHOULD BE UNDER THE SAME -- YOU KNOW, SAME OR SIMILARLY SITUATED, MEANING UNDER PAUL REDDICK. NOW IT'S EXPANDED, THAT ANYTHING HAVING TO DO WITH AGES IS TO BE KEPT OUT OF THIS CASE AND I DON'T THINK THAT'S TRUE.

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MR. MONAFO: YOUR HONOR, IF I MAY.

THE COURT: UH-HUH.

MR. MONAFO: THAT IS NOT OUR INTENTION. OUR INTENTION IS TO CONFINE THE PLAINTIFF TO COMPARING HERSELF TO OTHER INDIVIDUALS WHO ARE SIMILARLY SITUATED. THE DANGER IS IF SHE GOES OUTSIDE THE SIMILARLY SITUATED DEFINITION, SHE IS NOW INTO A PATTERN AND PRACTICE CASE, AND THEY ARE GOING TO BE ARGUING -- OR SHOWING THAT THE -- ARGUING THAT THE RIF IN AND OF ITSELF WAS DISCRIMINATORY.

THE COURT: I THINK THE QUESTION IS WHETHER THE RIF WAS A PRETEXT FOR AGE DISCRIMINATION. AND THE REASON I OVERRULED YOUR MOTION FOR SUMMARY JUDGMENT WAS BECAUSE THERE WAS, I THOUGHT, SUFFICIENT EVIDENCE IN THE RECORD THAT SPRINT DIDN'T FOLLOW ITS OWN PROCEDURES. I THINK THAT MAKES THE WHOLE PROCESS, YOU KNOW, FAIR GAME, WHAT WAS THE PROCEDURE AND WAS IT FOLLOWED? AND IF THIS SPREADSHEET WAS USED AS PART OF THE IMPLEMENTATION OF THE RIF AND IT HAS AGES ON IT, THEN I THINK THAT IT'S FAIR GAME FOR THE JURY.

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MR. MONAFO: THE OBJECTION IS, YOUR HONOR, THESE ARE -- THIS WOULD BE EVIDENCE OF DECISIONS THAT WERE NOT MADE BY PAUL REDDICK. COUNSEL STATED IN HIS OPENING STATEMENT, WHICH IS AN ADMISSION, THAT PAUL REDDICK MADE THE DECISION ON PLAINTIFF.

THE COURT: I'M AFRAID THAT YOU DON'T REALLY COMPREHEND WHAT I WAS SAYING IN THE MOTION IN LIMINE -- OR ON THE MOTION IN LIMINE. IT WAS NEVER MY INTENT TO PRECLUDE PLAINTIFF FROM PUTTING ON EVIDENCE ABOUT THE RIF, HOW IT WORKED, WHETHER SPRINT FOLLOWED ITS OWN RIF PROCEDURES, ET CETERA. I THINK BECAUSE OF THE FACTUAL BACKGROUND OF PLAINTIFF'S CLAIM, WE HAVE TO GET INTO WHAT HAPPENED TO OTHER EMPLOYEES.

MR. MONAFO: I UNDERSTAND THAT NOW, YOUR HONOR, THAT I -- WE WERE JUST -- THE WAY WE INTERPRETED THE ORDER WAS THAT IT WOULD ONLY -- THE ONLY FAIR GAME WAS PEOPLE THAT WERE SIMILARLY SITUATED TO PLAINTIFF AND THOSE WERE THE DECISIONS MADE BY PAUL REDDICK AND THOSE WERE THE RELEVANT DECISIONS. SO THAT'S THE WAY WE INTERPRETED THE ORDER.

THE COURT: AS I UNDERSTOOD THE MOTION IN LIMINE, YOU WERE ASKING ME TO PREVENT, FOR EXAMPLE, PLAINTIFF FROM TESTIFYING THAT SPRINT TREATED OTHER PEOPLE UNFAIRLY ON THE BASIS OF AGE.

MR. MONAFO: CERTAINLY.

THE COURT: YOU WANTED THE COURT TO PROHIBIT OTHER EMPLOYEES, SUCH AS OUR POTENTIAL JUROR, FROM COMING IN AND SAYING, I WAS RIF' D, IT WAS BECAUSE OF MY AGE AND THAT SORT OF THING. SO THAT'S WHERE I WAS TARGETING MY RULING. AND I STAND BY THAT RULING. I DON'T WANT THAT KIND OF EVIDENCE TO COME IN.

BUT I THINK THAT'S A TOTALLY DIFFERENT QUESTION FROM THE QUESTION WHETHER THE RIF, WHICH IS YOUR STATED NONDISCRIMINATORY REASON, IS A PRETEXT FOR AGE DISCRIMINATION. SO CAN WE GO AHEAD AND ADMIT ALL OF EXHIBIT 4?

MR. EGAN: YES. THAT WOULD BE MY MOTION TO ADMIT EXHIBIT 4.

MR. MONAFO: THEY WERE JUST -- WE IDENTIFIED MARC ELSTER AS I THINK HE JUST RAISED MARC ELSTER AND DOUG REINHARDT, THOSE WERE SPECIFIC INDIVIDUALS WE MENTIONED BY NAME IN OUR MOTION IN LIMINE SO THAT'S HOW WE INTERPRETED THE ORDER, JUDGE. THAT'S ALL I WANTED TO LET YOU KNOW. AND WE UNDERSTAND WHERE YOU'RE AT NOW.

THE COURT: OKAY. SO CAN WE GO AHEAD AND ADMIT EXHIBIT 4?

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MR. MONAFO: OVER MY OBJECTION? I MEAN, I WANT TO MAKE MY OBJECTION.

THE COURT: RIGHT. YOU'VE MADE YOUR OBJECTION AND THE COURT WILL RECEIVE EXHIBIT 4.

* * *

(WITNESS: JO RENDA)

Q. BEFORE I MOVE ON TO THAT LET ME ASK ABOUT THIS LANGUAGE. FUNCTIONS OR POSITIONS TO BE ELIMINATED. WE'LL GET INTO IT IN A LITTLE MORE DETAIL, BUT THERE ARE PEOPLE WHO WERE IN BILL BLESSING'S ORGANIZATION WHO HAD WHAT WAS DESCRIBED TO YOU AS A FUNCTIONAL RIF. IN OTHER WORDS, THE FUNCTION THEY WERE DOING WAS GOING AWAY, CORRECT?

A. CORRECT.

Q. AND THAT WAS SOMEONE -- FOR INSTANCE, THE JURY WILL SEE THE NAME DOUG REINHARDT ON SOME ORGANIZATIONAL CHARTS, THE FUNCTION THAT HE WAS DOING IN HIS GROUP, ACCORDING TO WHAT BILL BLESSING WAS TELLING YOU, WOULD BE GOING AWAY?

A. IN BILL BLESSING'S GROUP, YES, IT WAS A DUPLICATION OF FUNCTIONS PERFORMED BY ANOTHER DIVISION.

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Q. NOW THIS DOCUMENT ALSO LISTS -- AND I'M GOING TO FOCUS ON THE BOTTOM OF IT -- NAMES OF EMPLOYEES. AND AT THE VERY BOTTOM FROM THE NAME CARRITHERS, MENDELSOHN, KENNEDY, I'M LOOKING AT THE LEFT-HAND SIDE, MARC ELSTER, VICKIE WALTON, DOUG REINHARDT, FRANCIS DEBLAUWE, THOMAS CROUCH, SANJAY VERMA. THESE PEOPLE ARE ALL LISTED -- AS IF I CAN FOCUS IN A LITTLE BETTER -- RIF, R I F F -- EXCUSE ME, R I F. I'M SORRY.

MR. MONAFO: CAN I JUST HAVE AN OBJECTION ON THE GROUNDS OF RELEVANCE TO ANY DECISION NOT MADE BY PAUL REDDICK. AND MAYBE IT WOULD BE EASIER IF I JUST HAD A RUNNING OBJECTION TO THAT SO I DON'T HAVE TO INTERRUPT.

THE COURT: OKAY.

A. AND THERE'S A PAGE 2 AS WELL.

Q. (BY MR. EGAN) YES.

A. BUT YES.

Q. AND I'LL PUT PAGE 2 UP. IT'S A LITTLE HARDER TO READ BECAUSE IT WAS IN SOME KIND OF COLOR AND I'LL HAVE TO LET THE MACHINE FOCUS. THERE'S SOME NAMES LIKE JANET DAVIS, CARL ATWELL, NATALIE O'BANNON, DEBORAH LAW, DEBORAH HAMLIN, TERESA DODSON. AND

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THESE OTHERS ARE A STRAIN AND I'M GOING TO DO MY BEST AND YOU TELL ME IF YOU AGREE WITH IT. MARY CREASON. THE NEXT ONE I JUST CAN'T READ.

A. BRIAN FELD(PH).

Q. AND THE LAST ONE?

A. I CAN'T READ THAT ONE EITHER. THOSE THREE, THERE WAS A RUNNING QUESTION ON WHETHER THEY WERE TO BE INCLUDED IN BILL BLESSING'S ORGANIZATION OR NOT AS PART OF THIS REDUCTION.

Q. JUST SO WE CAN FOCUS ON WHAT THIS SAYS, IT SHOWS THESE PEOPLE AS BEING RIF'D. JANET DAVIS IS SHOWING AS A RIF?

A. CORRECT.

Q. CARL ATWELL IS SHOWN AS A RIF?

A. CORRECT.

Q. NOW CARL ATWELL, HE'S A MAN WHO'S BIRTH DATE WAS 1969, SO AT THE TIME THAT THIS HAPPENED, HE WAS 69, 23 OR 4?

A. NO, NO, 69, 79, 89, 99, 30.

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Q. OKAY. THIRTY. AM I BAD ON MATH. IS IT CORRECT THAT JANET DAVIS, WHO'S SHOWN ON HERE, WASN'T ACTUALLY SOMEBODY WHO -- YOU HAD THE INVOLUNTARILY RIF, THIS IS DESIGNATED AS A VOLUNTARY RIF BECAUSE SHE WAS MOVING OUT OF TOWN?

A. SHE -- WELL, I DON'T KNOW IF IT WOULD HAVE BEEN INVOLUNTARY OR VOLUNTARY, BUT SHE SPOKE UP IN THE MIDDLE OF OUR RESEARCH OF RESTRUCTURING THIS TO SAY THAT SHE WAS MOVING, SO THEREFORE, YOU KNOW, SHE WOULD HAVE BEEN LEAVING, SO WE INCLUDED HER IN THE HEAD COUNT.

Q. AND THIS KIND OF INFORMATION, IS THIS THE INFORMATION THAT WOULD GO TO THE LEGAL DEPARTMENT AS FAR AS YOU KNEW TO DETERMINE, YOU KNOW, WHATEVER THAT ADVERSE IMPACT IS?

A. PIECE -- YES. I DON'T KNOW THAT THIS EXACT SPREADSHEET WENT, BUT, YES, SOMETHING LIKE THIS.

* * *

Q. AND STEVE CARRITHERS, THERE'S ACTIVE PLACEMENT OPTIONS FOR HIM?

A. WITHIN THE BDS ORGANIZATION.

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Q. YES, MA'AM. CONNIE KENNEDY -- SO THIS DOES SHOW THAT -- WHAT'S GOING ON AS OF NOVEMBER 2ND IS THESE FOLKS -- IS THAT, WITHOUT THEM EVEN KNOWING THAT IT'S GOING ON, THAT THEY'RE BEING ACTIVELY PROMOTED FOR JOBS?

A. YES.

Q. OKAY. THEN YOU'VE GOT DEB LAW, VICKIE WALTON, SHE'S GOING TO BE KEPT AND THAT'S WHAT EVENTUALLY HAPPENED?

A. YES.

Q. AND THEN, OFFICERS ELIMINATED - NO KNOWN PLACEMENT OPTIONS, THAT WOULD BE MARC ELSTER, 11-22, AND DOUG REINHARDT, 11-22. THIS INDICATES THEY WOULD BE INFORMED ON THAT DATE?

A. NO, THAT WAS THEIR EFFECTIVE DATE. THEY WERE INFORMED, I THINK, THE 14TH AS WELL.

Q. SO IT'S ALREADY PLANNED AS OF THIS DATE, CONSISTENT WITH WHAT WE SAW IN THE EXCEL SPREADSHEET, THAT HE WOULD REMAIN RIF'D TO THE STREET?

A. CORRECT. ON THIS DATE, YES.

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Q. STAFF ELIMINATED - NO KNOWN PLACEMENT OPTIONS, WE'VE NOTED JANET DAVIS, HER HUSBAND WAS MOVING. WAS HE ASSIGNED TO HOMELAND SECURITY?

A. THAT'S WHAT I THINK IT WAS.

Q. FRANCIS DEBLAUWE. FRANCIS IS BEING RIF'D TO THE STREET 11-22, ELLEN MENDELSOHN, RIF'D TO THE STREET, NATALIE O'BANNON, RIF'D TO THE STREET, SANJAY VERMA, RIF'D TO THE STREET?

A. CORRECT.

Q. AND THEY'RE GOING TO COUNT AS PART OF THE RIF NOT FILLING SIX OPEN POSITIONS?

A. CORRECT.

Q. SO AS WE'RE SEEING HERE, THERE ARE WAYS THAT YOU CAN ACHIEVE YOUR NUMBERS, NOT BY NECESSARILY REDUCING FORCE, BUT AS WE SEE HERE, YOU DON'T FILL AN OPEN POSITION, THAT'S AN OPTION THAT WAS USED?

A. THAT'S ABSOLUTELY THE FIRST THING YOU DO.

CAN I SAY THE PURPOSE OF THIS DOCUMENT?

Q. YES, YOU CAN.

A. THE PURPOSE OF THIS DOCUMENT WAS BILL BLESSING WAS TRYING TO REDUCE HIS -- I'LL CALL IT BOGEY, HIS NUMBER OF WHAT HE WAS HAVING TO REDUCE. SO HE WENT BACK ACTIVELY TO -- HE WAS PUTTING THIS TOGETHER TO GO BACK ACTIVELY IN FRONT OF HIS BOSS TO TRY TO REDUCE THE NUMBER THAT HE HAD TO ELIMINATE. SO THAT WAS PART OF THAT, ALONG WITH THE FINANCIAL DOCUMENT.

Q. NOW, IF YOU'LL TAKE A LOOK AT 463 IN YOUR BOOK. THIS WILL SIMPLY ILLUSTRATE WHAT I TOLD THE JURY A FEW MOMENTS AGO, THAT WE WOULD FIND ORGANIZATIONAL CHARTS WITH YOUR HANDWRITING RELATING TO CERTAIN ACTIONS THAT WERE TAKING PLACE.

A. OKAY.

Q. AND THIS IS BLESSING DIRECT REPORTS. AND I'M GOING TO LOOK DOWN ON THE LEFT-HAND SIDE, WE'VE GOT THE NAME JANET DAVIS AND IN YOUR HANDWRITING VOL RIF, VOLUNTARY RIF?

A. THAT WOULD BE MY HANDWRITING, YES.

Q. SO A FEW MOMENTS AGO YOU WEREN'T SURE IT WAS VOLUNTARY OR INVOLUNTARY?

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A. I MEAN, THAT'S MY PHRASING. I DON'T KNOW THAT WE CALL IT VOLUNTARY OR INVOLUNTARY. IT WAS A RIF. WE GAVE HER A SEPARATION PACKAGE. BUT IT WAS BECAUSE WE KNEW SHE WAS LEAVING THE COMPANY ANYWAY AND WE NEEDED TO GO DOWN IN HEAD COUNT SO WE INCLUDED HER IN OUR REDUCTION.

Q. MARC ELSTER, THAT'S ONE WHERE AS OF THE DATE YOU KNEW -- ALREADY KNEW THAT BILL BLESSING HAD MADE THE DECISION TO RIF MR. ELSTER?

A. YES.

Q. AND YOU SO DESIGNATE. OVER ON THE RIGHT-HAND SIDE, DOUG REINHARDT. AND THAT'S YOUR HANDWRITING WHERE IT SAYS FUNCTIONAL RIF?

A. YES, THAT'S ACCURATE.

Q. BY THE WAY, THE PEOPLE UNDER HIM -- AND I DON'T KNOW THE NAME DENISE OLIVER. DO YOU KNOW IF DENISE OLIVER -- EVEN THOUGH THIS FUNCTION IS ELIMINATED, DID DENISE OLIVER REMAIN WITH SPRINT?

A. DENISE OLIVER SUPPORTED BOTH DOUG AND STEVE FALK. YOU SEE STEVE FALK IN THE MIDDLE?

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Q. YES.

A. AND SO DENISE STAYED AND CONTINUED SUPPORTING STEVE FALK.

Q. WITH RESPECT TO MR. ELSTER, DO YOU KNOW -- AND IT'S IN THE DOCUMENTS THEMSELVES, DO YOU KNOW IF HE HAD APPROXIMATELY 10 AND A HALF, 18 YEARS EXPERIENCE?

A. SERVICE?

Q. SERVICE.

A. HE HAD SERVICE -- HOLD ON.

Q. THAT PAGE 459 MAY TELL YOU.

A. LET ME FIND HIM. YES. 3-12 OF '84 IS HIS HIRE DATE.

Q. AND HIS BIRTH DATE, WHAT WAS HIS BIRTH DATE?

A. IT'S NOT ON THIS DOCUMENT.

Q. OKAY.

A. BUT I THINK YOU'VE ALREADY SAID HE WAS 51.

* * *

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Q. THE REDUCTION WAS SUPPOSED TO TAKE PLACE -- LET ME JUST ASK IT THIS WAY. DID A REDUCTION IN THE NUMBER OF EMPLOYEES TAKE PLACE IN THE NOVEMBER TIME FRAME, NOVEMBER 2002, IN THE BDS BUSINESS UNIT --

A. YES.

Q. -- DIVISIONS OF PCS?

A. YES, THEY WENT FROM APPROXIMATELY WHAT, 75 -- I THINK WE SAW AN ARTICLE EARLIER, 75 POSITIONS DOWN TO 56 OR 60.

Q. AND PLAINTIFF WAS ONE OF THE EMPLOYEES WHO LOST THEIR JOB AS PART OF THAT REDUCTION IN FORCE, IS THAT CORRECT?

A. YES.

Q. ALL RIGHT. LET'S GO THROUGH EXACTLY HOW THIS OCCURRED. WHAT WERE THE FIRST DECISIONS THAT WERE MADE AS PART OF THE REDUCTION IN FORCE?

A. WELL, WE STARTED AT THE TOP. SO BILL BLESSING LOOKED ACROSS HIS ORGANIZATION TO DETERMINE WHAT FUNCTIONS HE COULD DO WITHOUT OR FELT LIKE THE COMPANY CAN DO WITHOUT, SO -- AND ALSO SO WE STARTED WITH THE VP LAYER AND DETERMINED THAT -- OR HE DETERMINED THAT WE COULD REDUCE SOME OF

THE VPS. FLATTEN OUT THE ORGANIZATION A LITTLE BIT.

Q. AND ALTHOUGH YOU MAY NOT BE ABLE TO SEE EVERYTHING THAT'S IN THE BOX, THE VP, THAT'S THE TOP LINE OF BOXES, IS THAT RIGHT?

A. YES. SORRY, YES. LAYER 2.

Q. AND THERE WERE FIVE VPS, IS THAT CORRECT?

A. CORRECT.

Q. AND IT IS YOUR UNDERSTANDING HE MADE A DECISION TO REDUCE IT DOWN TO THREE?

A. YES, HE DID,

Q. AND THE TWO INDIVIDUALS WHO WERE LAID OFF AS A RESULT OF THAT DECISION BY MR. BLESSING -- AND BY THE WAY, DID PAUL REDDICK HAVE ANYTHING -- ANY INPUT IN THAT DECISION?

A. NO, HE DID NOT.

Q. IN FACT, HE WAS ONE OF THE CANDIDATES FOR THE REDUCTION, RIGHT?

A. YES, HE WAS.

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Q. SO OUT OF THE FIVE INDIVIDUALS, TWO WERE LET GO AND DO YOU RECALL WHO IT WAS?

A. MARC ELSTER AND DOUG REINHARDT.

Q. LET'S TALK ABOUT DOUG REINHARDT FIRST. WHAT WAS THE -- TELL US ABOUT THE DECISION TO --

A. THE AREA THAT DOUG REINHARDT HAS OVER, STRATEGIC ALLIANCES, WAS BASICALLY A DUPLICATION OF A FUNCTION THAT WAS ALSO DONE IN THE GMG ORGANIZATION, SO MR. BLESSING DECIDED THAT THEY COULD CONSOLIDATE THOSE AND HAVE THEM PERFORMED IN GMG AND IT WOULDN'T BE A DUPLICATIVE FUNCTION GOING FORWARD.

Q. LET ME JUST STOP YOU THERE AND GO BACK TO OUR DIVISION CHART. SO WHAT YOU'RE SAYING IS THAT INSIDE OF BDS, MR. REINHARDT WAS IN CHARGE OF WHAT THEY CALL STRATEGIC ALLIANCES, CORRECT?

A. CORRECT.

Q. AND MR. BLESSING IN DOING HIS WORKFORCE ANALYSIS, HE DETERMINED THAT INSIDE OF GMG, THIS OTHER DIVISION OF SPRINT, THERE WAS -- THERE WERE OTHER EMPLOYEES DOING SIMILAR TYPE WORK?

A. CORRECT.

Q. AND SO HE DECIDES, WE CAN'T AFFORD TO DO THIS WORK ANYMORE IN OUR DEPARTMENT, IS THAT RIGHT?

A. CORRECT

* * *

Q. (BY MR. MONAFO) I'VE PLACED AN X, MISS RENDA, IN THE LINE LEADING DOWN TO DOUG REINHARDT'S NAME. AGAIN, JUST TO CLARIFY WHAT WE WROTE, THAT WAS STRATEGIC ALLIANCES AND THAT FUNCTION OF WORK WAS NO LONGER GOING TO BE PERFORMED WITHIN MR. BLESSING'S ORGANIZATION?

A. THAT'S CORRECT.

Q. NOW, WERE MR. CARRITHERS, CONNIE KENNEDY AND VICKIE WALTON LAID OFF AS WELL?

A. THEY WERE SUBJECT TO LAYOFF, YES.

Q. WHAT DID -- WHAT HAPPENED WITH RESPECT TO THEM?

A. STEVE CARRITHERS AND VICKIE WALTON WERE ABSORBED INTO THE BUSINESS DEVELOPMENT ORGANIZATION. CONNIE KENNEDY FOUND ANOTHER POSITION WITHIN SPRINT.

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Q. WE'LL COME BACK TO THAT AND THEN WITH MR. ELSTER'S GROUP, WERE HIS MANAGERS ALSO CONSIDERED FOR OTHER POSITIONS?

A. NO, MR. ELSTER WAS THE ONE THAT WAS LET GO AND THE OTHER --

Q. AND HIS MANAGERS UNDERNEATH?

A. THE MANAGERS ARE THE ORGANIZATION UNDERNEATH HIM, THERE WAS SOME CONSOLIDATION. WE -- THEY COMBINED THERESA DODSON AND NATALIE O'BANNON'S POSITION TOGETHER INTO ONE.

Q. AFTER MR. ELSTER WAS LAID OFF, DIDN'T THESE MANAGERS MOVE INTO PAUL REDDICK'S --

A. YES.

Q. -- SPOT?

A. YES.

* * *

Q. (BY MR. MONAFO) AFTER THE VICE-PRESIDENTS -- DECISIONS WERE MADE BY MR. BLESSING ON THE VICE-PRESIDENTS, WERE THERE SUBSEQUENT MEETINGS AT THAT POINT?

A. YES.

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Q. AND WHO WERE THOSE --

A. SEVERAL.

Q. WHO WERE THOSE MEETINGS BETWEEN?

A. THERE WERE MEETINGS WITH BILL BLESSING AND PAUL REDDICK. THERE WERE MEETINGS WITH BILL BLESSING AND STEVE FALK, MEETINGS WITH BILL BLESSING AND BENNETT GAMEL AND MYSELF.

Q. THIS IS GAMEL OVER HERE?

A. RIGHT.

Q. AND HE'S MAKING DECISIONS, ALONG WITH MR. BLESSING, THE TOP OF THE ORGANIZATION, ABOUT THE FOLKS OVER IN HIS ORGANIZATION, IS THAT CORRECT?

A. CORRECT.

Q. AND THEN MR. FALK IS DOING THE SAME THING --

A. CORRECT.

Q. ABOUT HIS ORGANIZATION? AND NOW THAT MR. ELSTER AND MR. REINHARDT AND MR. BLESSING HAVE MADE THE DECISION THEY ARE NOT GOING TO BE PART OF THE ORGANIZATION

GOING FORWARD, WHO IS MEETING WITH MR. BLESSING ON ALL THESE PEOPLE?

A. PAUL REDDICK.

* * *

Q. AND WE TALKED A LITTLE BIT ABOUT THE FORMER MANAGERS UNDER MR. REINHARDT'S GROUP, CARRITHERS, KENNEDY AND WALTON. AND WERE THEY ALL CONSIDERED INCUMBENTS IN THE -- IN THIS NEW REDDICK ORGANIZATION?

A. YES.

Q. AND LET'S TALK ABOUT MR. CARRITHERS FOR A MOMENT, DO YOU RECALL HOW OLD MR. CARRITHERS WAS?

A. UH, 55 OR SO.

* * *

Q. AND WHERE DID -- DO YOU RECALL WHERE MR. CARRITHERS WENT?

A. HE ENDED UP IN A SPOT WITHIN THE REDDICK ORGANIZATION. LET ME GET TO THE --

Q. DO YOU KNOW IF HE MOVED INTO JOHN OVARY'S GROUP?

A. YES, HE DID.

* * *

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Q. NOW BACK TO MR. CARRITHERS. DO YOU RECALL HE MOVED INTO JOHN OVARY'S NEW ORGANIZATION?

A. YES.

Q. HOW ABOUT VICKIE WALTON? DO YOU REMEMBER WHAT HAPPENED TO VICKIE WALTON?

A. VICKIE WALTON MOVED INTO WES DITTMER'S AREA, THE N BUILDING INCUBATOR GROUP AND THEN --

Q. AND THEN CONNIE KENNEDY, WHAT HAPPENED TO CONNIE KENNEDY?

A. CONNIE KENNEDY FOUND A POSITION IN GMG.

Q. SO THAT WOULD HAVE BEEN ONE OF THE DIVISIONS OUTSIDE OF PCS ONCE AGAIN?

A. CORRECT.

Q. AND YOU TOLD US STEVE CARRITHERS WAS 55. DO YOU REMEMBER HOW OLD CONNIE KENNEDY WAS?

A. UH, I THINK SHE'S 51, ISN'T SHE?

Q. AND I THINK 51 AND VERY CLOSE TO THE PLAINTIFF'S AGE. ACTUALLY, THESE WERE AGES AT THE TIME OF --

A. AT THE TIME IN 2002, YES.

Q. AND HOW ABOUT VICKIE WALTON?

A. UH, DO YOU HAVE THAT?

Q. ABOUT THE SAME. WE DO, WE'LL PUT IT UP.

A. VICKIE WALTON WAS 51 AS WELL.

Q. AND THESE WERE DECISIONS MADE BY PAUL REDDICK?

A. CORRECT.

Q. ON MR. REINHARDT'S OLD MANAGERS, THEY WERE WORKING ON STRATEGIC ALLIANCE PROJECTS?

A. BY HIS FORMER MANAGER, YES.

Q. AND HE TOOK THEM ALL INTO HIS NEW ORGANIZATION.

A. YES, THAT THEIR SKILL SETS FIT NICELY.

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Q. WAS THERE EVER ANY CONVERSATION BY MR. REDDICK TO PUT VICKIE WALTON INTO MFS?

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MR. MONAFO: PUTTING THAT ACTUAL SPREADSHEET INTO EVIDENCE WITH THE AGES ON THERE OF PEOPLE WHO ARE NOT SIMILARLY SITUATED, THAT'S MY --

MR. EGAN: SPRINT HAS DOCUMENTS THAT SHOW AGES IN AN AGE CASE. THE FACT THAT SPRINT SHOWS AGES IN AN AGE CASE IS RELEVANT IN ITSELF. WE CAN TALK TO THE WITNESS AND I'LL DRAW OUT FROM HER HOW IT WAS USED, BUT DOCUMENTS SHOWING INDIVIDUALS AND DEMOGRAPHIC INFORMATION IS ABSOLUTELY RELEVANT.

MR. MONAFO: AND JUST TO UNDERSTAND, I DON'T OBJECT, I KNOW I INTEND TO BRING IT OUT MYSELF, BUT SHE HAD SPREADSHEETS WITH THE PEOPLE'S AGES ON IT, HOW ELSE COULD SHE DO HER JOB? BUT MY OBJECTION IS THE PEOPLE SHOULD NOT LEARN THE ACTUAL AGES OF A BUNCH OF PEOPLE WHO ARE NOT SIMILARLY SITUATED TO THE PLAINTIFF. I THINK ONLY THE PEOPLE WHO WERE SIMILARLY SITUATED, THOSE ARE THE AGES OF THE RELEVANCE.

THE COURT: I THINK WE'RE GOING TO NEED TO DEAL WITH THIS ON AN EXHIBIT-BY-EXHIBIT BASIS, BUT I THINK YOU MAY BE OVEROPTIMISTIC IN SAYING YOU'RE GOING TO ELICIT TESTIMONY THAT AGE WAS PART OF WHAT THEY COULD CONSIDER, BUT NOT LET THE JURY SEE THE DOCUMENTS THAT OUTLINE WHAT THE AGES ARE.

IN LIMINE ORDER. THE ONLY PEOPLE THAT PLAINTIFF CAN COMPARE HERSELF TO ARE THE PEOPLE WHO SHE WAS SIMILARLY SITUATED TO.

MR. EGAN: YOUR HONOR, I DO NOT UNDERSTAND THAT TO BE THE COURT'S RULING. WHAT THE DEFENDANT WANTED US TO DO WAS KEEP OTHER EMPLOYEES FROM OTHER AREAS, NOT THE BDS GROUP. FOR INSTANCE, THERE'S A GENTLEMAN NAMED MARC ELSTER AND WE COVERED ALL THIS IN THE SUMMARY JUDGMENT ORDER. HE WAS 51, HE WAS TERMINATED BY BLESSING AS PART OF THIS. THERE'S REINHARDT, THERE'S VARIOUS PEOPLE. OF COURSE, THEY USE IT AS TOOLS, THAT'S THE WAY THEY GOT DOWN TO THE CUTS. THAT'S SOMETHING THAT THE JURY HAS A RIGHT TO KNOW AND PIECE TOGETHER.

AND I'M SURE THEY WILL ATTACK ELLEN MENDELSOHN, SHE'S A BAD PERFORMER, WE THINK IT'S AGE, WE HAVE TO BE ABLE TO SHOW WHAT THE COMPARATIVE AGES ARE. I CAN TRY AND PIECE IT TOGETHER, BUT HONESTLY IT IS TOUGHER TO DO. I WILL DO MY BEST TO DO IT AS I GO THROUGH WITH THIS WITNESS.

MR. MONAFO: WELL, IF -- LIKE I SAID, MY MAJOR CONCERN -- REALLY MY OBJECTION IS TO THE SPREADSHEET.

MR. EGAN: I AM GOING TO ASK HER ABOUT THE SPREADSHEETS. THEY ARE SPECIFIC ABSOLUTE TOOLS THAT SHE USED.

THERE ARE A BUNCH OF PEOPLE ON THESE LISTS THAT REDDICK HAD NOTHING TO DO WITH. THEY WERE PART OF THE RIF. AND IF THEY HAD ALL THIS INFORMATION, MY CONCERN IS IT WOULD BE BACK THERE, THEY'LL GO GET ALL THE INFORMATION THAT THE ORDER DID EXCLUDE.

MR. EGAN: I FULLY AGREE IF WE LET THIS COME IN THEY'RE GOING TO GET A BUNCH OF NAMES OR A BUNCH OF DIFFERENT PEOPLE, BUT NOT PEOPLE WHO ARE NOT SIMILARLY SITUATED. THEY ARE NOT GOING TO BE THE DISCRIMINATED. YOU'RE THE ONE THAT'S SAYING IT'S A RIF AND YOU'RE SAYING IT'S A LEGITIMATE, NONDISCRIMINATORY RIF. SO I DON'T SEE HOW YOU CAN POSSIBLY PROVE THAT IF YOU ONLY LET IN EVIDENCE -- THE RIF AFFECTED MORE THAN THE PEOPLE IN PLAINTIFF'S GROUP.

MR. MONAFO: ABSOLUTELY.

THE COURT: SO YOU CAN'T HAVE IT BOTH WAYS.

MR. MONAFO: I WAS TRYING TO DRAW THE LINE IS JUST THAT, YES, THERE WAS A RIF. YES, IT WAS BIGGER THAN HER GROUP, IT WAS THE WHOLE PCS BUSINESS UNIT. BUT WE'RE NOT GOING TO GO THROUGH THE DEMOGRAPHICS OF EVERYBODY IN THE PCS BUSINESS UNIT. WE'RE GOING -- ONLY GOING TO FOCUS -- HONE IN ON PAUL REDDICK, THAT WAS MY UNDERSTANDING OF THE MOTION

WANTED TO AVOID PUTTING IT IN OUT OF ORDER SO WE MARKED THEM THAT WAY AND WILL ASK WITNESSES ABOUT THEM, EVERY ONE OF THEM HAS BEEN -- YEAH.

MR. MONAFO: THERE'S NO DISPUTE ABOUT THAT.

MR. EGAN: WELL, I MEAN THE POINT IS THEY'RE PRODUCED AS SPRINT 435 THROUGH 467, ET CETERA, THERE'S ORGANIZATIONAL CHARTS THAT WILL BE RELEVANT FOR VARIOUS WITNESSES. THEY'RE ALL GOING TO COME IN AS UNCONDITIONALLY RELEVANT BECAUSE MOST OF THESE HAVE HANDWRITING BY BILL BLESSING THAT JO RENDA WORKED WITH HIM ON THE CUTS THAT ARE MADE. SO, YES, I APOLOGIZE THAT THEY ARE, UNFORTUNATELY, A GROUP OF DOCUMENTS.

THE COURT: WHY DON'T YOU OFFER THEM LIKE BREAK IT DOWN TO DISCRETE DOCUMENTS, HAVE IT MARKED DOWN TO 4A, 4B, 4C AND DEAL WITH THEM ONE BY ONE.

MR. EGAN: I CAN TRY. IT JUST TAKES LONGER TO DO. I'M TRYING TO BE -- I WANT TO USE THE WORD EFFICIENT.

THE COURT: IF THESE ARE ALL COMING IN --

MS. MILLER: I DON'T HAVE ANY INTENTION TO FORCE HIM TO DO SOMETHING THAT'S GOING TO MAKE IT INEFFICIENT. IF THIS ALL JUST CAME IN,

WOULD HAVE TO HAVE BEEN SUPERVISED BY PAUL REDDICK, SO I UNDERSTAND THAT ASPECT OF IT. JUST SO THE COURT'S AWARE, THESE DOCUMENTS ARE ALL WERE USED BY HR, THEY WERE DOCUMENTS, AS SHE'S TESTIFIED, THAT WERE USED AS TOOLS TO DECIDE HOW THEY MAKE THE CUTS.

WE'VE ALREADY HEARD FROM MS. MILLER IN OPENING STATEMENT THAT OTHER PEOPLE LOST THEIR JOBS FROM BDS, SO IT'S CERTAINLY, YOU KNOW, PART OF THE EVIDENCE IN THIS CASE THAT I EXPECT THE DEFENDANT WOULD WANT TO USE THAT OTHER PEOPLE RECEIVED RIFS AND SO THEY JUST -- YOU KNOW, THEY DON'T GET TO AVOID THE FACT THAT THIS IS AN AGE CASE, THIS IS ALL THEIR DOCUMENTS THAT WERE USED DURING THE RIFS AS THE TOOLS TO GET DOWN TO THE CUTS THAT WERE MADE. IT'S ALL RELEVANT TO THIS CASE.

THE COURT: IS IT ONE, A SINGLE DOCUMENT, OR HAVE YOU PUT TOGETHER A GROUP OF DOCUMENTS?

MR. EGAN: WE MARKED THEM AS THEY WERE PRODUCED TO US. IT'S A SERIES OF DOCUMENTS THAT ALL OF THEM RELATE TO THIS BDS GROUP. MANY OF THEM RELATE TO SUCH THINGS AS -- AND THEY'VE BEEN MIXED TOGETHER. YOU KNOW HOW IT IS SOMETIMES IN THESE CASES, THEY'RE -- YOU KNOW, THE DEFENDANT -- I'M NOT CRITICAL, BUT IT'S JUST THE WAY IT'S PRODUCED TO US. SO WE

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NUMBER TWO, I THINK YOU ALL STIPULATED THEY'RE BUSINESS RECORDS AND THEY'RE ADMISSIBLE SUBJECT TO -- ONLY TO OBJECTIONS AS TO RELEVANCE

MR. EGAN: YES, YOUR HONOR.

THE COURT: I BELIEVE THAT'S IN THE PRETRIAL ORDER. SO IF YOUR OBJECTION JUST GOES TO FOUNDATION --

MR. MONAFO: WELL, YOUR HONOR, I THINK THE MAIN THING THAT CAUGHT MY EYE IN THE SPREADSHEETS IS THAT THEY'VE GOT -- THERE IS VARIOUS ORGANIZATIONAL CHARTS THAT IF THE JURY LOOKED AT -- THEY HAD ALL THIS BACK IN THE ROOM, THEY WOULD BE ABLE TO PIECE TOGETHER THAT SOMEBODY WAS PART OF THE RIF AND GET THEIR AGES AND SOMEBODY WHO PAUL REDDICK HAD NO DECISION-MAKING AUTHORITY OVER. THAT'S MY CONCERN.

MR. EGAN: YOUR HONOR, MAYBE WE BETTER VISIT ABOUT THAT. YOU KNOW, AS YOU RECOGNIZED IN YOUR ORDER, THE DECISIONS TO MAKE THE RIFS IN THE BDS ORGANIZATION WERE MADE BY BLESSING AND REDDICK AND THAT IS THE FACT.

AS FAR AS MY BEING ABLE TO BRING IN OTHER EMPLOYEES TO TESTIFY AS TO HOW THEY WERE TREATED, YOUR RULING CLEARLY SAYS THEY

EXCUSE ME, THE MOTION IN LIMINE ORDER, THEY'RE NOT SIMILARLY SITUATED.

IF THEY COME INTO EVIDENCE THE JURY COULD HAVE THEM BACK IN DELIBERATIONS AND THEY WOULD BE CONSIDERING AGES AND THINGS OF THAT NATURE THAT THEY SHOULDN'T EVEN CONSIDER. SO THAT'S ONE OF THE MY CONCERNS, CERTAINLY ON THE SPREADSHEET.

BUT THEY SAID THERE'S A GROUP -- THIS IS A GROUP OF DOCUMENTS THAT DIFFERENT PEOPLE CREATED SO I THINK THE FOUNDATION NEEDS TO BE LAID THROUGH DIFFERENT WITNESSES.

MR. EGAN: YOUR HONOR, MY --

THE COURT: FIRST OF ALL, I DON'T THINK THAT I EVER RULED THAT THE JURY CAN'T KNOW ANY AGES OR RACES OR NAMES OF OTHER PEOPLE.

MR. MONAFO: CORRECT.

THE COURT: SO WHAT THE MOTION IN LIMINE GOES TO IS THE ARGUMENT THAT THE PLAINTIFF MAY ARGUE AS TO ADVERSE TREATMENT OF THESE OTHER PEOPLE BECAUSE OF THEIR AGE. SO AS LONG AS THIS IS JUST GOING IN AS BACKGROUND INFORMATION, I DON'T SEE WHAT CONCEIVABLE INFERENCE THE JURY CAN DRAW FROM IT. THAT'S NUMBER ONE.

APPENDIX S — EXCERPTS FROM TRIAL TRANSCRIPT DATED JANUARY 4, 2005

* * *

MR. MONAFO: YOUR HONOR, EXHIBIT 4 IS A COMPILATION OF VARIOUS DIFFERENT DOCUMENTS. I THINK WE -- I DON'T THINK IT CAN BE TAKEN AS A BIG GROUP OF EXHIBITS LIKE THIS. SO I WOULD HAVE AN OBJECTION TO -- THERE'S SOME SPREADSHEETS IN HERE THAT HAVE INFORMATION, FOR EXAMPLE, THAT WOULD BE BARRED UNDER SOME OF THE PRETRIAL ORDERS. IF HE'S GOT A PARTICULAR DOCUMENT --

MR. EGAN: I DON'T KNOW WHAT HE'S TALKING ABOUT ITS BARRED BY THE PRETRIAL ORDER.

MR. MONAFO: IT APPEARS TO BE.

ME. EGAN: MAY WE APPROACH?

(WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD BETWEEN COURT AND COUNSEL AT THE BENCH OUTSIDE THE HEARING OF THE JURY:)

MR. MONAFO: YOUR HONOR, THE OBJECTION IS EXHIBIT 4 IS A GROUP OF DOCUMENTS THAT SOME OF THEM ARE SUCCESSION PLANNING, SOME OF THEM ARE ACTUALLY FROM THE RIF. IT'S A COMPILATION OF VARIOUS THINGS. THERE'S SOME SPREADSHEETS IN HERE THAT CONTAIN DATES OF BIRTH, FOR EXAMPLE, RACE, AGE OF PEOPLE WHO I THINK, BY VIRTUE OF THE PRETRIAL ORDER -- OR

945 F.2d 1054, 1056-57 (8th Cir. 1991) (Other complaints of age discrimination should have been "freely admitted at trial.")

V. Defendant objects by stating plaintiff's disclosures fail to adequately identify witnesses and their expected testimony. Defendant points out that plaintiff listed as a potential witness: "records custodians, should certain records other than defendant become relevant and necessary." This listing is for rebuttal and/or impeachment purposes only. Therefore, plaintiff cannot contemplate the subject matter of the expected testimony or provide a brief synopsis of the substance of the facts to which the witness is expected to testify, until such time rebuttal and/or impeachment of defendant's witnesses would be necessary.

WHEREFORE, for the foregoing reasons, defendant's objections to Plaintiff's Final List of Potential Witnesses should be denied.

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ATTORNEYS FOR PLAINTIFF

view such pieces of evidence in the context of *all* evidence and inferences derived therefrom. Rule 401 defines "relevant evidence" as meaning: "[e]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probable than it would be without the evidence." Plaintiff's evidence on these subjects meets the test of Rule 401, and must be considered and weighed by the Court in the context of trial.

IV. Defendant objects to plaintiff listing individuals whom defendant claims are not similarly situated and know nothing about plaintiff and/or her separation of employment from Sprint. As plaintiff set forth in her Opposition to Defendant's Motion in Limine, Tenth Circuit law is solidly *against* defendant. *Minshall v. McGraw Mill Broadcasting Company, Inc.*, 323 F.3d 1273 (10th Cir. 2003) at 1285; *Spulak v. K-Mart Corporation*, 894 F.2d 1150 (10th Cir. 1990); *Bingman v. Natkin & Company*, 937 F.2d 553 (10th Cir. 1991); *Greene v. Safeway Stores, Inc.*, *supra*, 98 F.3d 554, at 561. Plaintiff worked in Business Development, which is a department within the Sprint PCS division. Exhibits 3 and 4 which are Succession Planning documents are entitled "PCS Succession Planning." Plaintiff listed witnesses who also worked in Sprint PCS and were terminated in the same time-frame as she was, also as part of a RIF. For the reasons stated in plaintiff's Opposition to Defendant's Motion In Limine, defendant's objections to prohibiting evidence from other employees terminated in Sprint's PCS reduction-in-force under similar circumstances as plaintiff must be denied. See also *Estes*, supra, (evidence showing "history and work practices" probative of a climate of age and race discrimination must be admitted); *Phillips v. ANR Freight*,

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Defendant states that plaintiff asserts Jim Fee, Paul Reddick, and Bill Blessing "will have knowledge" of "age bias comments by defendant's management toward older employees." Defendant objects to this assertion by stating plaintiff has testified she is unaware of any such alleged comments attributable to Sprint's management. Defendant is correct that this is plaintiff's testimony, but plaintiff does not know how Jim Fee, Paul Reddick and Bill Blessing will testify until they are asked at trial.

Defendant next objects to plaintiff eliciting testimony regarding Sprint's Staff Associate Program and Alpha Rating System. As plaintiff stated in her Memorandum in Opposition to Sprint's Motion in Limine, Sprint's Alpha Rating System and Staff Associate Program most certainly may be relevant and admissible.

Sprint's Alpha Rating System most certainly will be relevant — as this Court recognized in the Summary Judgment Order. Improper use of the "new" Alpha Rating System, contrary to Sprint's policies and procedures on same, is one piece of evidence on the overall issue of pretext.[1] Plaintiff does not intend herself to offer "opinions" as to whether the Alpha Rating System or Staff Associate Program have "a discriminatory purpose or effect." (*See* Defendant's Motion In Limine, at 5). To the extent facts on those subjects properly come into play in the evidence, it will be fact-based only. The jury must make its own conclusions as to how they

1. *See* Order Denying Summary Judgment, at page 3 (dealing with the Alpha Rating System, among other subjects); and pages 5-6 (dealing with how the manipulations of the evaluation system constitutes one prong of the evidence going to pretext).

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II. Defendant objects to plaintiff's disclosures which it labels as conclusory allegations and unfounded opinions. As plaintiff stated in her Memorandum In Opposition to Defendant's Motion In Limine, Court Doc. #87, plaintiff intends to testify concerning her **personal observations** regarding Paul Reddick, rather than offer improper opinion testimony and conclusory allegations. She must be permitted to present evidence describing what she saw and observed firsthand, regarding selections made by the defendant (particularly Reddick) in promotions, demotions, and reductions-in-force. The Court must assess this subject in the full context of the trial evidence, including how and in what context it is offered.

This is an age discrimination case. Plaintiff must be allowed proper latitude to try to prove her case, by showing how she was treated compared to other younger employees; she must be allowed to testify regarding her observations of her own workload and her personal hands-on knowledge and experience in working with certain employees. Blanket pretrial prohibitions of evidence are extremely dangerous and damaging in discrimination cases, where "plaintiffs must face the difficult task of persuading the fact-finder to disbelieve an employer's account of its own motives." *Estes v. Dick Smith Ford*, 856 F.2d 1097, 1103 (8th Cir. 1988). From all the circumstances, the jury must decide whether defendant's proffered reasons for choosing plaintiff for RIF are pretextual. *Beaird v. Seagate Technology, Inc.*, 145 F.3d 1159 (10th Cir. 1998).

III. Defendant objects to plaintiff's disclosures that defendant claims were not previously raised by plaintiff.

policies and procedures on same, is one piece of evidence on the overall issue of pretext.

Defendant has known all along that Kissinger played a large part in the Reduction-In-Force procedure that involved plaintiff, and others, even though his name was not individually listed on plaintiff's Voluntary Rule 26 Disclosures. If the court should rule that Mr. Kissinger cannot testify live at trial, then plaintiff should be allowed to read as an Admission Mr. Kissinger's testimony — given as Sprint's Rule 30(b)(6) designee — in another age case involving the RIF waves at issue here: *Williams v. Sprint*, Case No. 03-2200-JWL. Such use is expressly authorized under Rule 32 (a)(2) "for any purpose." (Fed.R.Civ.P.) Such deposition admissions also are expressly authorized under Rule 801(d)(2) to be offered as Sprint's statement of fact by Rule 30(b)(6) witness Kissinger. Finally, utter absence of any surprise or prejudice is shown by the fact plaintiff explicitly signaled the intended possible use of this deposition Admission at p. 72, fn 7 of Plaintiff's Summary Judgment Response:

> Jim Kissinger, Sprint's top HR officer, gave a Rule 30(b)(6) deposition in the *Williams* class action. There, Kissinger testified for Sprint that the RIF Displacement Guidelines are "mandatory." (Kissinger depo., 12/17/03, p. 35). Kissinger's depo. is *not* attached, since he can be called as a witness at trial in *Mendelsohn*, or his testimony can be read.

her Witness List — on December 16, 2004. Defendant filed its Witness List long after business hours the night before. Plaintiff had calculated the deadlines for filings in this case the same way these same parties calculated deadlines for similar filings in a case recently tried against Sprint, *Cami Owens v. Sprint United Management*, Case No. 03-2371-JWL. This time, however, Sprint counted differently. Sprint has *not* been prejudiced in *any* way, and had time to object to Plaintiff's Witness List.

Defendant's Specific Objections

I. Defendant's objection that plaintiff has improperly listed a previously undisclosed witness is unfounded. James Kissinger, Sprint's Senior Vice President of Human Resources, was discussed throughout Jo Ella Renda's deposition that was taken in this case on February 23, 2004. Ms. Renda testified that James Kissinger was her supervisor until 2003. (Renda p. 13, line 7 - 10)

James Kissinger, in a staff meeting, told her (and others) there would be an impending reduction in 2002. (Renda p. 16, line 4 - 19) Renda went on to testify that James Kissinger was one of the individuals who authored the new LINK instructions for managers rating employees in grade 71 to 79. (Renda p. 117, line 16 - 25). There were numerous documents marked in Renda's deposition either authored by James Kissinger or received by both James Kissinger and Renda relating to the new LINK and Alpha Rating system that was to be effective in the first part of 2002. As this Court recognized in the Summary Judgment Order, improper use of the "new" Alpha Rating System, contrary to Sprint's

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Q. AND THEN THE NEXT WOULD BE CARL ATWELL. AND WE'VE ESTABLISHED IN THIS TRIAL THAT HE OBTAINED ANOTHER JOB IN SALES OR MARKETING.

A. YES.

Q. AND NICHOLS, SHE, WAS IN GENE COLEMAN'S GROUP, AS YOU'VE JUST SHOWED ON THE BLOWUP. SHE WAS RIF'D?

A. YES, HER POSITION WAS ELIMINATED.

Q. AND THEN DEB LAW WAS NOT.

A. SHE WAS RETAINED WITHIN MY GROUP.

Q. DEB HANLIN?

A. WAS RETAINED ELSEWHERE IN SPRINT.

Q. THERESA DODSON?

A. RETAINED WITHIN MY GROUP.

Q. AND THEN THERE'S THREE ON HERE WHO WERE MISTAKES BECAUSE THEY WERE ACTUALLY ON SPECIAL PROJECT --

A. THEY WERE ON THAT B2B SPECIAL PROJECT WITH REDDICK AND SOMEHOW GOT ON THIS LIST.

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Q. NOW, THE DESIGNATION ON THIS DOCUMENT WHERE IT SAYS ADVERSE, YOU KNOW THAT SOMETHING THAT'S DONE ALL THE TIME, EVERY TIME THAT THERE IS A REDUCTION, IS THAT THERE IS SOME KIND OF ANALYSIS CALLED AN ADVERSE IMPACT ANALYSIS?

A. YES. I'VE HEARD IT CALLED DUE DILIGENCE AS WELL.

Q. DO YOU KNOW WHAT IT IS?

A. HR AND LEGAL GO THROUGH THE SUBMITTED CHANGES BY THE LINE MANAGERS JUST TO MAKE CERTAIN THERE IS NO APPEARANCE OF ANYTHING UNTOWARD THAT WOULD BE, I SUPPOSE, GENDER OR ETHNICITY, OR AGE-RELATED.

Q. DO YOU KNOW WHETHER OR NOT WHEN THAT DOCUMENT GOES FOR THAT ANALYSIS WHETHER IT SHOWS PEOPLE WHO ARE RIF'D, SUCH AS CARL ATWELL, WHO WE KNOW WERE NOT ACTUALLY RIF'D?

A. I DO NOT KNOW THEIR PROCESS, BUT THEY'RE PROBABLY LOOKING AT THE POSITIONS ELIMINATED WITHIN MY ORGANIZATION. SO FOR THAT PURPOSE, HIS POSITION WAS ELIMINATED AND SO IT VERY WELL MAY HAVE BEEN INCLUDED.

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Q. SO IF IT'S INCLUDED, IF SOMEONE WERE LOOKING TO SEE WHETHER THERE WAS A -- SOME IMPACT ON AGE, HIS YOUNGER AGE WOULD BE INCLUDED TN THAT ANALYSIS?

A. YOU'D HAVE TO ASK HR TO BE SURE OR LEGAL. I DON'T PERFORM THE ANALYSIS.

Q. BUT WHAT YOU DID TELL US IS, IT WOULD BE OKAY TO DO SUCH A CALCULATION AS FAR AS HE WAS RIF'D OUT OF YOUR GROUP, YOU CAN COUNT HIM AS ONE PERSON OUT OF YOUR GROUP?

MR. MONAFO: I WANT TO MAKE SURE WE'RE CLEAR HERE. YOU'RE SAYING HE CAN COUNT IT AS PART OF HIS BUDGET REDUCTION. ARE YOU TALKING ABOUT LEGAL NOW --

Q. (BY MR. EGAN) NO, I'M TALKING ABOUT CAN BE COUNTED AS RIF, LISTED ON A RIF, BECAUSE FOR BUDGET PURPOSES CARL ATWELL IS OUT OF YOUR ORGANIZATION?

A. I FEEL LIKE I NEED TO GIVE A -- SORT OF A FULL EXPLANATION.

Q. SURE.

A. IN REVIEWING -- PREPARING FOR TESTIMONY, I WENT BACK AND RECONSTRUCTED. I STARTED WITH 80 BUDGETED POSITIONS, SEVEN OF THEM WERE NOT FULL AT THE TIME, THERE

WERE NO PERSON IN THOSE BUDGET POSITIONS AS PART OF MY BUDGET AND SIX MOVED TO -- WERE REORGANIZED INTO MARKETING AS PART OF THOSE. SO TAKE THOSE 12 OFF, I HAD 60 REMAINING POSITIONS -- I'M SORRY, 67. AND THEN I RECALL ELIMINATING POSITIONS THAT HAD 12 PEOPLE IN THEM, OF WHICH SOME WERE SUCCESSFUL IN FINDING POSITIONS ELSEWHERE IN SPRINT, AND EIGHT, TO THE BEST OF MY KNOWLEDGE, LEFT THE EMPLOY OF ALL OF SPRINT.

* * *

Q. AND BY THIS TIME IN NOVEMBER OF 2002, PAUL REDDICK WAS INVOLVED IN THE DECISIONS IN THE NOVEMBER TIME FRAME IN WHICH YOU HAD TO DO THE REDUCTION IN FORCE, IS THAT CORRECT?

A. YES, I INVOLVED ALL THREE OF MY REMAINING DIRECT REPORTS.

Q. WHEN DID YOU INVOLVE PAUL REDDICK?

A. I DO NOT REMEMBER THE EXACT DATE, BUT I DO KNOW IT WAS AFTER HAVING ALREADY MADE THE DECISION TO TERMINATE REINHARDT AND ELSTER AND REORGANIZE INTO JUST THREE GROUPS.

Q. OKAY. SO YOU INVOLVED PR, PAUL REDDICK, IN THE RIF PROCESS AFTER ELSTER AND REINHARDT WERE TERMINATED, WHICH MEANT --

A. NO, NO, NO. BEFORE. THEY HAD NOT BEEN NOTIFIED. BUT I MADE THAT DECISION SO WE MET PRIVATELY FOR A FEW AWKWARD DAYS BEFORE FINALIZING THE DECISIONS OF HOW THE NEW THREE PART ORGANIZATION WOULD BE MANAGED. AND THEN ON A ORCHESTRATED DAY I INFORMED THOSE TWO PEOPLE AND OTHER PEOPLE WERE INFORMED BY OTHERS.

Q. OKAY. AND I'M TRYING TO PUT UP WHAT YOU TOLD US IN A VERY SUMMARY FASHION. YOU INVOLVED REDDICK IN THE RIF PROCESS AFTER THE ELSTER AND REINHARDT DECISION HAD BEEN MADE?

A. YES.

* * *

Q. AFTER THE MANDATE FROM MR. LAUER TO REDUCE YOUR BUDGET, I BELIEVE YOU TESTIFIED THAT THE FIRST THING YOU DID IS YOU REDUCED THE NUMBER OF VICE-PRESIDENTS REPORTING TO YOU FROM FIVE TO THREE, DO YOU RECALL THAT?

A. YES, I RECALL THAT. BUT I BELIEVE I SAID FIRST I THOUGHT ABOUT WHAT FUNCTIONS WE FULFILL AND ARE ANY OF THOSE THINGS WE JUST STOP DOING IN ORDER TO REDUCE THE WORKLOAD BUT THEN ALLOWS US TO REDUCE THE LABOR.

Q. THANK YOU.

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A. AFTER THINKING ABOUT THAT, THEN I DECIDED TO ELIMINATE THE REINHARDT AND ELSTER POSITIONS.

Q. AND LET ME PUT BEFORE YOU EXHIBIT 17, THE DISPLACEMENT GUIDELINES. AND WE'LL PUT THAT UP ON THE MONITOR HERE.

A. I STILL HAVE A HARD COPY.

Q. AT THE TOP, MR. BLESSING, DOES IT SAY, "THESE GUIDELINES FOR SELECTING EMPLOYEES FOR REDUCTION ARE LISTED IN DESCENDING ORDER OF IMPORTANCE"?

A. YES.

Q. AND DID YOU DETERMINE WHAT POSITIONS WOULD BE UNAFFECTED AND THEN WHICH POSITIONS WOULD BE AFFECTED? I THINK YOU SAID THAT'S THE FIRST THING YOU DID.

Q. YES. I CALL FUNCTIONS OR WHAT WORKLOAD ARE WE GOING TO CONTINUE DOING OR STOP DOING. AND THEN IT WASN'T UNTIL AFTER YOU DID THAT ANALYSIS THAT YOU MOVED DOWN AND STARTED TO FIGURE OUT WHO WAS GOING TO PERFORM THE REMAINING FUNCTIONS?

A. YES.

* * *

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Q. AND IF I REPRESENTED YOU TO THAT MR. CARRITHERS WAS 55 YEARS OLD, DOES THAT SEEM RIGHT TO YOU?

A. WELL, YES, HE HAS GRAY HAIR. I KNOW FROM PREPARING FOR THE TRIAL THAT BOTH STEVE AND VICKIE WALTON WERE OVER 50 AND THEY MOVED INTO THE REDDICK ORGANIZATION, DOUBLING THE NUMBER OF PEOPLE IN HIS ORGANIZATION OVER 50 AFTER THE REORGANIZATION THAN HAD BEEN IN HIS ORGANIZATION PRIOR TO THE REORGANIZATION -- THAN THE RIF.

Q. AND CONNIE KENNEDY, I THINK SHE WAS ALSO OVER 50. SHE STAYED WITHIN SPRINT, IS THAT RIGHT?

A. YES.

* * *

Q. AND IS IT A FACT, THEN, THAT AS PART OF THIS REDUCTION IN FORCE AND REORGANIZATION, THE TWO OLDEST ADMINISTRATIVE ASSISTANTS WERE NOT IMPACTED NEGATIVELY BY THE RIF?

A. THAT'S CORRECT.

Q. IN FACT, MR. BLESSING, IN EACH LEVEL OF JOB -- JOB LEVEL, VICE-PRESIDENT, DIRECTOR, MANAGER, ANALYST, ADMINISTRATIVE ASSISTANT,

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THE OLDEST PERSON IN THAT JOB LEVEL SURVIVED THE RIF, ISN'T THAT TRUE?

A. YES, UPON REVIEW, I NOW KNOW THAT TO BE TRUE.

TRIAL TESTIMONY FROM JANUARY 11, 2005
(WITNESS: PAUL REDDICK)

* * *

Q. . . . OF ALL OF THESE FOLKS, WOULD ELLEN MENDELSOHN HAVE BEEN THE OLDEST AMONG ALL OF THESE INCUBATORS WHO REMAINED AFTER THE RIF?

A. IF I COULD JUST SEE IT A LITTLE CLOSER.

Q. SURE.

A. SO THE QUESTION IS, IF SHE WOULD HAVE STAYED, WOULD SHE HAVE BEEN THE OLDEST MEMBER?

Q. YES.

A. I DON'T THINK SO.

Q. WHO WOULD HAVE BEEN?

A. I THINK STEVE CARRITHERS. AND THEN I THINK VICKIE WALTON.

Q. WAS CARRITHERS AN INCUBATOR AFTERWARDS?

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A. YES. SO, I MEAN, I DIDN'T KNOW THE AGE OF THE EMPLOYEES WHEN WE HAD THE RIF, BUT I DO KNOW THAT I HAD ONE EMPLOYEE OVER 50 BEFORE THE RIF AND I HAD TWO EMPLOYEES OVER 50 AFTER THE RIF. AND THAT WAS VICKIE WALTON AND STEVE CARRITHERS.

* * *

Q. WERE ANY -- ALL THE DECISIONS MADE REGARDING REDUCTION IN FORCE MADE AT THE VICE-PRESIDENT LEVEL, AND UP?

A. YEAH, WITHIN BILL BLESSING'S ORGANIZATION THERE WERE FOUR INDIVIDUALS, MYSELF, BENNETT GAMEL, STEVE FALK AND BILL BLESSING.

Q. DID ANY OF THE OTHER DIRECTORS IN THE GROUP MAKE THE REDUCTION IN FORCE DECISIONS?

A. NO. AND I'LL JUST CLARIFY. NOT DIRECTLY. I WOULD HAVE INDIRECTLY GONE AND SAID, HOW ARE THESE PEOPLE PERFORMING? BECAUSE I KNEW I HAD TO MAKE DECISIONS AND I COULDN'T EXPLAIN TO THEM WHAT THOSE DECISION WERE GOING TO BE.

* * *

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Q. EVERYTHING TO THE LEFT OF DOUG REINHARDT, SINCE REINHARDT AND ELSTER WERE GONE, YOU WERE MAKING THE DECISIONS ON WHO WOULD STAY AND WHO WOULD GO?

A. YEAH. I MADE DECISIONS SPECIFICALLY ON WHO WOULD STAY AND GO IN MY GROUP AND THEN ONCE -- BILL HELPED ON, YOU KNOW, SAYING WHAT WE WERE DOING WITH ELSTER'S AND REINHARDT'S GROUP, THEN I HAD AN OPTION TO SAY DO I WANT TO TAKE SOME CANDIDATES FROM THOSE GROUPS AS WELL.

Q. OKAY. AND DOUG REINHARDT'S GROUP INCLUDED STEVE CARRITHERS, CONNIE KENNEDY AND VICKIE WALTON. THE JURY HAS SEEN MULTIPLE TIMES AN EXHIBIT THAT TALKS ABOUT STEVE CARRITHERS BEING 55 YEARS OLD AND CONNIE KENNEDY AND VICKIE WALTON BEING 51. WHAT DID YOU DECIDE TO DO WITH THESE PEOPLE WHO WERE ORPHANS, AS YOU PUT IT?

A. I DECIDED TO PICK ALL THREE OF THEM UP. I WANTED TO PLACE THEM IN DIFFERENT PARTS OF MY ORGANIZATION. I WAS TOLD THAT CONNIE KENNEDY WAS GOING TO GET A POSITION IN THE BUSINESS SIDE SO THAT I SHOULDN'T TAKE HER, SHE WAS ALREADY GOING TO RE PLACED. BUT I DECIDED TO PICK UP VICKIE AND STEVE.

Q. AND DID CONNIE KENNEDY GET THAT JOB IN THE BUSINESS SIDE?

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A. YEAH. ACTUALLY I HELPED HER BECAUSE I TOLD THEM I WANTED TO PURSUE HER AT ONE TIME, THEN WAS TOLD NOT TO, AND THEN SHE AT ONE POINT WAS WITHOUT A JOB BECAUSE THE OTHERS -- THE OTHER GROUPS SAID THEY DIDN'T WANT TO PICK HER UP. SO WE HAD LUNCH AND JUST KIND OF CHATTED THROUGH DIFFERENT OPTIONS FOR IT AND SHE ENDED UP FINDING A DIFFERENT POSITION, DID END UP ON THE BUSINESS SIDE WITH THE CONSUMERS.

Q. IF YOU WANTED TO GET RID OF OLDER EMPLOYEES IN THE REDUCTION IN FORCE, COULD YOU HAVE LET GO STEVE CARRITHERS AND CONNIE KENNEDY AND VICKIE WALTON?

A. YES.

Q. THAT WAS YOUR DECISION?

A. I COULD HAVE LET THEM GO.

* * *

Q. AND DID YOU KEEP UP ON THE RELATIVE PERFORMANCE OF THE EMPLOYEES AND WHAT WAS GOING ON?

A. YES, SPECIFICALLY, MY DIRECTORS.

Q. DID YOU SELECT ELLEN MENDELSOHN FOR INCLUSION IN THE REDUCTION IN FORCE?

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A. YES, I DID.

Q. WAS THAT YOUR DECISION?

A. YES, THAT WAS MY DECISION.

Q. AND WHY DID YOU DECIDE TO INCLUDE HER?

A. BECAUSE SHE WAS A POOR PERFORMER. I DIDN'T CHOOSE TO EXCLUDE HER BECAUSE OF HER AGE.

* * *

Q. DID THE SALARIES OF BDS GO UP AS A RESULT OF THE REDUCTION IN FORCE?

A. NO, THAT WOULD HAVE BEEN REALLY CONTRARY TO THE WHOLE DIRECTIVE WE WERE GIVEN TO REDUCE OUR COSTS BY 30%.

Q. AND IS THAT WHAT YOU DID?

A. YES. THAT'S WHAT HE DID. BY REDUCING LABOR COSTS BY ABOUT 25%. AND I THINK THE NUMBERS ARE ALL -- WE REDUCED HEAD COUNT FROM 75 DOWN TO 57 IN THE ENTIRE GROUP.

* * *

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Q. AND IN MAKING YOUR DECISIONS DID YOU SOLICIT INPUT FROM JAMES FEE AND YOUR OTHER DIRECTORS?

A. YES, I DID.

Q. WHAT TYPE OF INPUT DID YOU SPECIFICALLY SOLICIT FROM HIM DIRECTLY IN CONNECTION WITH THE REDUCTION?

A. SO SINCE I HAD SOME RECENT KNOWLEDGE, YOU KNOW, UP THROUGH JULY, ON HOW PEOPLE WERE PERFORMING, WHAT I WAS MOST CONCERNED ABOUT WAS MAKING DECISIONS ON BEHALF OF MY DIRECTORS WITHOUT KIND OF MORE RECENT INFORMATION, IF ANYTHING HAD CHANGED, SO I KIND OF SPECIFICALLY ASKED, HOW'S IT GOING WITH SPECIFIC INDIVIDUALS? I KNOW THEIR PERFORMANCE ISSUES, ARE THOSE THINGS IMPROVING? IS IT GETTING BETTER, WORSE, OTHERWISE? BECAUSE THAT WAS THE EXTRA INFORMATION I WAS GOING TO HAVE TO TAKE IN TO MAKE THESE DECISIONS.

* * * *

APPENDIX T — PLAINTIFF'S OFFER OF PROOF REGARDING SIMILARLY SITUATED EMPLOYEES TERMINATED AS PART OF A REDUCTION IN FORCE DATED JANUARY 11, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN MENDELSOHN

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

PLAINTIFF'S OFFER OF PROOF REGARDING SIMILARLY SITUATED EMPLOYEES TERMINATED AS PART OF A REDUCTION IN FORCE

Pursuant to Fed.R.Evid. 103(a)(2), Plaintiff makes the following offer of proof in the form approved by the court.[1]

Background

In Plaintiff's Rule 26(a) disclosures served in this case, she identified a number of individuals who she claimed would be able to give testimony supporting her claims. Specifically,

1. The court has apparently exercised its discretion, pursuant to Fed.R.Evid. 103(b), not to require Plaintiff's offer of proof in "question and answer form."

she identified several former employees of Sprint who, although they did not work in the same distinct work group that she worked in, were nevertheless terminated in roughly the same time frame (late 2002 and early 2003) and under similar circumstances. Sprint took the depositions of several of these individuals and the testimony of some of these individuals was offered in response to Sprint's summary judgment motion.

The court has ruled that employees outside of the Business Development and Strategy (BDS) organization in which Plaintiff was last employed will not be permitted to testify about their terminations. Accordingly, Plaintiff sets forth below the substance of the evidence that plaintiff intended to offer through these witnesses, pursuant to F.R.Evid. 103(a)(2).

BONNIE HOOPES

Bonnie Hoopes was born in 1955. (B. Hoopes, p. 5).[2] She worked for Sprint from 1984 to 1995, was rehired in 1997 and was terminated (the same day as Ellen Mendelsohn) November 22, 2002. (B. Hoopes, pp. 10; 18; 20; 30-31; 49-50). In her last position, Mrs. Hoopes worked at "the PCS building at College and Lowell." (Id, at 24). Mrs. Hoopes was told her job was being eliminated. (B. Hoopes, pp.50-51). However, Mrs. Hoopes' job duties were assumed by three different individuals, Toyiah Cavole (early 30's), Rob Hisle

2. References are to the deposition of Bonnie Hoopes, taken on April 24, 2004, by defendant Sprint. Relevant portions of this deposition were attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

(40's), and another young female (30's) whose name she cannot recall. (B. Hoopes, pp. 32; 58-61). In 2002, Mrs. Hoopes heard comments about "there being a lot of young people in our group" and "that I was the oldest," and " I had the most seniority." (B. Hoopes, pp. 82-83). Mrs. Hoopes testified she was discriminated against because of her age because she was over 40 when she was terminated, because she had taken disability leave, and because her former supervisor, Sharon Vorhies, "told me I was too old for the job." That was in February, March 2002. (B. Hoopes p. 92-95). Sharon Vorhies also gave Hoopes an e-mail in February of 2002, around the time of the roll out of the "alpha" rating system, citing Jack Welch's book and indicating a preference for employees "blessed with lots of runway ahead of them." (See Exhibit A attached).

YVONNE WOOD

Yvonne Wood was born in 1951. (Wood, p. 5).[3] Ms. Wood was employed at Sprint from November, 1996 until her termination in Sprint's RIF on January 15, 2003. (Wood, pp. 8; 39). Like Ms. Mendelsohn, Ms. Wood worked in Sprint PCS. (Id., 20-21). Ms. Wood testified that her termination on January 15, 2003 was based on her disability, the fact that she was a woman, and her age. (Wood, pp. 39; 43;112-113). Ms. Wood so testified because in January 2003, she accidentally received a copy of a spreadsheet from a supervisor, Dan Kennedy, that indicated that age, race and

3. References are to the deposition of Yvonne Wood, taken on April 22, 2004, by defendant Sprint. Relevant portions of this deposition were attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

sex were considered in selection decisions. This spreadsheet was created in March, 2002, by a Mr. Dienhart. The spreadsheet was titled something like layoffs and RIFs. (Wood, pp. 48-51; 77-78). Ms. Wood further testified that she knows plaintiff Ellen Mendelsohn and Sharon Miller filed suit claiming they were terminated because of their age. (Wood, pp. 104-105; 109-110). Sharon Miller (whose testimony is discussed below) told Ms. Wood that Ted Stock described Ms. Wood's group as "a bunch of old, sick people." (Wood, pp.71; 75-76). Ms. Wood also testified that she believed Sprint's intern program (the Staff Associate Program) constituted age discrimination, in that Sprint would bring in young individuals, right out of college, and put them on a fast track to fill management positions, and in Ms. Wood's particular case, trained them to do her job. (Wood, pp. 71-74; 115):

A. They brought in an intern and he was going to be doing my job.

* * *

A. They sent him to D.C. to be trained for my job and would not give me training. (Id. at 72).

SHARON MILLER

Sharon Miller was born in 1950. (Miller, p. 6).[4] She was employed at Sprint off and on from March, 1990 to April, 1996, and then was rehired by Sprint in October, 2002, only to be terminated in November 21, 2002 (within a day of Plaintiff

4. References are to the deposition of Sharon Miller, taken on April 23, 2004, by defendant Sprint. Relevant portions of this deposition were attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

Mendelsohn). (Miller, pp. 8-11; 18; 60; 87). Like Plaintiff Mendelsohn, Bonnie Hoopes, and Ms. Wood; Sharon Miller also worked in Sprint PCS. During Ms. Miller's employment with Sprint, Sprint Manager Ted Stock frequently made age-derogatory comments directly to Ms. Miller — and to other senior managers — that he felt he had "too many older people," and ailing "old, sick, people" in his department. Miller testified that Stock referred to, and specifically gave as examples of the "old"/"sick" employees Mark Craigin, Carolyn Selberg and Yvonne Wood. (Miller, pp. 25-26; 29-33; 41; 45-47; 50; 58). Stock also told Ms. Miller numerous times about his concerns about a couple of other employees who had medical issues "and who were older," and Stock commented to Ms. Miller about waiting for layoffs so "he could clean up his department." (Miller, pp. 27; 59). When Ms. Miller wanted to hire an older gentleman into an open position for Sprint, Miller testified Ted Stock told her he would "like to see someone a little younger in the job." (Miller, pp. 28; 50-51; 53; 59). One time when an employee had to take off work due to an accident, Ms. Miller testified that Ted Stock instructed her that once the employee returned to work, she was to "build a case" against him, so that Mr. Stock would have evidence to fire him. (Miller, pp. 26; 41; 45-46; 58).

JOHN BOREL

John Borel. Mr. Borel was born in 1947. (Borel, p. 5).[5] After spending 30 years in the Army, Mr. Borel worked at Sprint as Project Manager III from November, 2000 until his

5. References are to the deposition of John Borel, taken on April 19, 2004, by defendant Sprint. Relevant portions of this deposition were attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

termination, due to RIF, on February 26, 2003. (Borel, pp. 10; 12; 21; 33). Mr. Borel has filed a lawsuit against Sprint claiming his termination was based on his age. (Borel, p. 96). Mr. Borel claims his termination was based on his age, in part based on the fact that a week before he was notified he was being laid off, Borel went to talk to a manager, Jay Cole, about a vacant Project Manager position open in Mr. Cole's department. Mr. Cole told Mr. Borel "he thought I would be a very good fit for the job and he wanted me on his team." (Borel, at 27). When Mr. Borel was terminated a week later on February 26, 2003, Mr. Borel formally applied for the position. Mr. Cole then told Mr. Borel, "I was not allowed to put in for this because I had been banned and that I had an adverse performance rating in my file." (Id. at 20). Borel later found out a young female was placed in the position. (Borel, pp. 20-23; 31-32). When Mr. Borel was terminated on February 26, 2003, he was told his termination was not based on his performance, but was based on his position being eliminated. (Borel, pp. 36; 95-96). Later Mr. Borel found out that, unbeknownst to him, he had been given an adverse performance rating, even though there had been no mention before his termination of anything wrong with his performance. (Borel, pp. 39-40). Mr. Borel also found out that younger female, Deanne Patton, was moved into his position after his termination to perform his job duties. She had just been displaced from her team that had been laid off. (Borel, pp. 32; 81; 94). When Mr. Borel contacted his supervisor, Janet Mathus, after his termination, and after he found out he had been given an adverse rating, Ms. Mathus admitted to Mr. Borel that, "my performance was not adverse at all and that she was forced to give me that rating" by Mohammad Hussain. (Borel, p. 42). Mr. Borel testified that he witnessed another older employee being harassed because of her age, Carol Kippes.

Ms. Kippes told him she was laid off the same day she returned to work after being out on medical leave and she told him she felt she had been terminated because of her age. (Borel, pp. 75-76; 78; 92). Borel also testified that after his termination, he told Rene Latta, HR representative with Sprint, that he felt he was discriminated against based on his age. (Borel, pp. 79-80).

JOHN HOOPES

John Hoopes, Jr. Mr. Hoopes was born in 1949. (J. Hoopes, p. 5).[6] Mr. Hoopes worked for Sprint from February 15, 1986 through February 8, 2002. (J. Hoopes, pp. 6-7; 25). As he approached his 53rd birthday Hoopes became the only individual terminated under the supervision of Terri Reynolds. (J. Hoopes, p. 29). Mr. Hoopes was told by Ms. Reynolds that an "alpha" rating had been assigned to him, but Ms. Reynolds did not know what it was. (J. Hoopes, p. 37). Mr. Hoopes' job duties were assumed by a younger female manager, who did not have any experience in call center technology. (J. Hoopes, pp. 34-36). During Mr. Hoopes' employment with Sprint, when he tried to hire an individual over the age of 40, he had to get his Vice President's approval. (J. Hoopes, pp. 57; 60). After his termination, from February 2002 through February 2003, Mr. Hoopes applied for "bonafide" open positions at Sprint through Sprint's outplacement service, Right Management. Although he applied for at least 5 jobs each Tuesday and Thursday, sometimes "15 to 20 jobs on those days," he was never offered another position, despite his qualifications. (J. Hoopes,

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6. References are to the deposition of John Hoopes, taken on April 24, 2004, by defendant Sprint. Relevant portions of this deposition were attached to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

pp. 41-44). Mr. Hoopes noticed that "the vast majority" of the former Sprint employees who attended Right Management were over the age of 40. (J. Hoopes, pp. 43-44). Mr. Hoopes claims he was discriminated against by Sprint because of his age. (J. Hoopes, pp. 51-54).

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

APPENDIX T-1 — EXHIBIT A
EMAIL FROM SHARON VORHIES
TO BONNIE HOOPES
DATED FEBRUARY 26, 2002

Hoopes, Bonnie
From: Vorhies, Sharon
Sent: Tuesday, February 26, 2002 6:58 AM
To: Grant, Sarah; Hoopes, Bonnie; Lange, Shelli; Niezer, Jennifer; Zilar, Sherri
Subject: Quote

Here's a larger portion of the quote from Jack Welch's book that Susan read yesterday. I really think this captures the differentiating factors for each of us and our staff. The fourth E is obviously very key, we need people to consistently execute and deliver.

> Differentiation comes down to sorting out the A, B, and C players.
>
> The A's are people who are filled with passion, committed to making things happen, open to ideas from anywhere, and blessed with lots of runway ahead of them. They have the ability to energize not only themselves, but everyone who comes in contact with them. They make business productive and fun at the same time.
>
> The have what we call "the four Es of GE leadership": very high *energy* levels, the ability to *energize* others around common goals, the *edge* to make tough yes-and-no decisions, and finally, the ability to consistently *execute* and deliver on their promises.

Appendix T-1

We actually started with three Es: energy, energize, and edge. When we did our first Session Cs appraising people based on these Es, we saw several managers with plenty of energy, the ability to energize their teams, and a lot of edge. As we went from business to business, we kept running into one or two who met the three E criteria but didn't look very good to us. Before we got home, we decided we were missing something. What these managers were lacking was the ability to deliver the numbers. So we added the fourth E - execute. That did it.

Sharon Vorhies
Director-CS Enterprise Project Integration Office
(913) 253-4369

APPENDIX U — DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S OFFER OF PROOF REGARDING SIMILARLY SITUATED EMPLOYEES TERMINATED AS PART OF A REDUCTION IN FORCE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS DATED JANUARY 12, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Cause No. 03-CV-02429-KHV-DJW

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S OFFER OF PROOF REGARDING SIMILARLY SITUATED EMPLOYEES TERMINATED AS PART OF A REDUCTION IN FORCE[1]

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1. Sprint incorporates herein the arguments and citations set forth in its Motion in Limine, Memorandum in Support, and Reply to Plaintiff's Memorandum in Opposition regarding the impropriety of testimony from others who were not similarly situated with Plaintiff. (Docs. Nos. 78, 79, 101)

Appendix U

INTRODUCTION

Defendant Sprint/United Management Company ("Sprint") opposes Plaintiff's Offer of Proof Regarding Similarly Situated Employees Terminated as Part of a Reduction in Force. This Court has already determined that evidence regarding others' separations shall be excluded when such others are not "similarly situated." (Doc. 111, Docket Order) The Court defined "similarly situated" for purposes of its ruling by requiring proof that Paul Reddick was the decision-maker in the adverse employment action *and* temporal proximity. *Id.* Simply put, the witnesses identified by Plaintiff in her offer of proof are *not.*

INDIVIDUAL PROSPECTIVE WITNESSES

Bonnie Hoopes[2]

Although Ms. Hoopes was separated from Sprint in approximately the same time period as Plaintiff, there is no evidence Paul Reddick made the decision to separate her employment. Ms. Hoopes was told by her supervisor, Chrystal Cone (in her 40's), that her employment with Sprint as a Senior Manager Strategic Initiatives was being separated.

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2. As with all of the individuals identified in Plaintiff's Offer of Proof, Sprint denies it discriminated against Ms. Hoopes. However, these individuals' testimony regarding their individual experiences is not relevant to this Memorandum in Opposition because the individuals identified by Plaintiff are not similarly situated for purposes of providing testimony in this matter. Accordingly, for the sake of brevity, Sprint does not address the individual claims of age discrimination cited by Plaintiff in her Offer of Proof.

(Ex. A, B. Hoopes, 22: 16: - 23: 20; 38: 25 - 49: 14; 40: 24 - 41:2; 49: 23 - 25) Ms. Cone reported to Allen Winters, who in turn reported to Tony Castanon. (Ex. A, B. Hoopes, 39: 24 - 40:9). Ms. Hoopes was *not* in Paul Reddick's chain of command at the time of her separation of employment from Sprint. In particular, Ms. Hoopes testified she never worked under Jim Fee or Paul Reddick. (Ex. A, B. Hoopes, 111: 6 - 14)

There is simply no other evidence that Ms. Hoopes and Plaintiff were similarly situated. For example, Ms. Hoopes did not know the name of the organization that employed Plaintiff. (Ex. A, B. Hoopes, 110: 21 - 23) Moreover, other than understanding Ms. Hoopes performance feedback had been unfavorable, Ms. Hoopes knew *nothing* of the terms and conditions of Plaintiff's employment, including her job title and compensation. (Ex. A, B. Hoopes, 110: 5-10; 110: 13 - 15; 110: 20-22).

Yvonne Wood

Ms. Wood was terminated from her position in January, 2003, which was several months *after* Plaintiff's separation. Perhaps more importantly, Ms. Wood did not work in Paul Reddick's chain of command. At the time of her separation, Ms. Wood reported to Roberta King, who in turn reported to Ted Stock. (Ex. B, Wood, 27: 2 - 8, 31: 4 - 6) Mr. Stock reported to Mike Miller who, in turn, reported to Jerry Batt. (Ex. B, Wood, 31: 7 - 14). Again, there is simply no evidence Ms. Wood worked under Paul Reddick.

Appendix U

As with Ms. Hoopes, Ms. Wood knows nothing about Plaintiff other than she has filed a claim alleging age discrimination. (Ex. B, Wood, 14: 20 - 25; 108: 13 - 16) Ms. Wood was only made aware of Plaintiff's claim through her counsel, who also represents Plaintiff in this matter. (Ex. B, Wood, 108: 13 - 18) Ms. Wood knows nothing more regarding Plaintiff, including *any* of the terms and conditions of her employment, such as her last job title, compensation, the organization she worked in, who she reported to, her performance rating, etc. (Ex. B, Wood, 108: 19 - 109: 16). In fact, Ms. Wood does not know Plaintiff, nor has she spoken with her. (Ex. B, Wood, 109: 17 - 22).

Sharon Miller

As with the others referenced in Plaintiff's offer of proof, Ms. Miller is not similarly situated to Plaintiff. In particular, Ms. Miller never worked under Paul Reddick; Ms. Miller reported to Noel Strong. (Ex. C, Miller, 70: 24 - 71: 22) In fact, Ms. Miller does not even know which organization Plaintiff worked in while employed by Sprint, nor does she know the individual to whom Plaintiff reported to at the time of her separation. (Ex. C, Miller, 122: 18 - 22).

Ms. Miller, like the others identified in Plaintiff's offer of proof, has no knowledge of Plaintiff's terms and conditions of employment at Sprint. (Ex. C, Miller, 122: 7 - 10; 122: 14 - 17; 122: 23 - 123: 8). Ms. Miller never interacted with the Sprint PCS Business Development & Strategy group (i.e., Plaintiff's group). (Ex. C, Miller, 123: 15 - 24) Likewise, she does not recall ever meeting, speaking, or interacting

with Plaintiff. (Ex. C, 122: 10 - 13; 123: 9 - 14; 124: 10 - 12) Under the circumstances, Ms. Miller is clearly not similarly situated.

John Borel

Mr. Borel, like all of the others cited by Plaintiff in her offer of proof, is not similarly situated with Plaintiff. Mr. Borel's employment as a Project Manager III in the STIC Lab was separated on February 26, 2003, more than four months after Plaintiff's employment was separated. (Ex. D, Borel, 11: 22 - 12: 6; 13: 2 - 8; 22: 1 - 2) Moreover, Mr. Borel never reported to Mr. Reddick. At the time of his separation of employment, Mr. Borel reported to Janet Mathus, who in turn reported to Mohammad Hussain. (Ex. D, Borel, 18: 16 - 19: 16) Mr. Hussain reported to an individual named Mihwa, who in turn reported to Dennis Huber. (Ex. D, Borel, 19: 23 - 20: 6)

Like all of the others, Mr. Borel knows nothing about Ms. Mendelsohn's employment at Sprint, including her job title, job grade, length of service, the organization she worked in, etc. (Ex. D., Borel, 99: 9 - 100: 3). Mr. Borel does not "personally" know Plaintiff. (Ex. D., Borel, 100: 12 - 13) Nevertheless, Mr. Borel believes Plaintiff has been subjected to discrimination regarding her separation of employment from Sprint. (Ex. D., Borel, 99: 24 - 100: 13)

Mr. Borel is clearly not similarly situated with Plaintiff yet he feels qualified to opine that Plaintiff was subjected to age discrimination at Sprint. Mr. Borel's willingness to speculate regarding Plaintiff's claims demonstrates the

danger in allowing those without relevant information regarding Plaintiff's separation to testify in this case.

John Hoopes

John Hoopes is also not similarly situated with Plaintiff for the purpose of testifying at trial in this matter. Mr. Hoopes was separated from his position at Sprint in February, 2002, more than nine before Plaintiff's separation of employment. (Ex. E, J. Hoopes, 7: 25 - 8: 1; 25: 11 - 18) Furthermore, Mr. Hoopes did not work in Paul Reddick's chain of command. Instead, he worked under Terri Reynolds.[3] (Ex. E, J. Hoopes, 17: 2- 6) As with the others Mr. Hoopes has no information about Plaintiff's employment and separation of employment at Sprint, including, among other things, her job title, job grade, and the organization that she worked in when her employment was separated. (Ex. E, J. Hoopes, 66: 1 - 67: 11) Mr. Hoopes never worked with Sprint PCS Business Development & Strategy (i.e., Plaintiff's work group), nor did he have an opportunity to observe Plaintiff's performance. (Ex. E, J. Hoopes, 66: 23 - 67: 8) As with the others listed above, Mr. Borel's purported testimony is not relevant and he is not similarly situated with Plaintiff.

3. Mr. Hoopes does not recall who his director was the time of his separation of employment. (Ex. E, J. Hoopes, 26: 10- 12)

Appendix U

CONCLUSION

Plaintiff has failed to demonstrate *any* of the individuals identified in her offer of proof are similarly situated for purposes of testifying in this matter. In particular, several of the individuals were separated well before or after Plaintiff. More importantly, *none* of these individuals were in Paul Reddick's chain of command. Finally, the individuals identified in the offer of proof know nothing of the terms and conditions of Plaintiff's employment or separation from employment. Accordingly, these individuals' testimony is irrelevant and will only serve to confuse the jury regarding the sole issue in this case: whether *Plaintiff* was subjected to age discrimination.

Respectfully submitted

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Appendix U

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ATTORNEYS FOR DEFENDANT SPRINT/UNITED MANAGEMENT COMPANY

APPENDIX U-1 — EXHIBIT A
EXCERPTS FROM DEPOSITION TRANSCRIPT
DATED APRIL 22, 2004
(YVONNE WOOD)

[Commencing at Page 29]

* * *

Q. Who supervised you after Maureen McGuire was no longer supervising your employment as data analyst III?

A. Roberta King.

Q. How long did Roberta King supervise your employment?

A. Max, six months to a year, at the most.

Q. Was Roberta King an employee of Sprint at the time she supervised your employment?

A. Yes.

Q. Do you know what her job title was?

A. No.

Q. Do you know what her job grade was?

A. No.

Q. Do you know what Ms. King's age was at the time she supervised your employment?

A. I believe she was thirty-nine when she [30] started.

Q. When you say started, you mean started supervising your employment?

A. Yes. She had a birthday, that's why, and she turned forty.

Q. She turned forty while she was supervising your employment?

A. Yes.

Q. If I understand you correctly, Roberta King was the last person who supervised your employment while you were employed at Sprint?

A. Yes.

Q. Did Sharon Miller have a point of contact or somebody who she reported back to at Sprint while she was a contractor supervising your employment?

A. A person who worked for Sprint, you mean?

Q. Yes.

A. Yes, Ted Stock.

Q. Who did Maureen McGuire work for while she supervised your employment; do you know?

A. Ted Stock.

Q. Do you know who Mr. Stock reported to at the time that Maureen McGuire reported to him, while she supervised your employment?

[31] A. We had a vice president who was young and in his thirties, and I can't remember his name. That was before Mike Miller.

Q. Do you know who Roberta King reported to at the time she supervised your employment?

A. Ted Stock.

Q. Do you know who Ted Stock reported to at the time Roberta King supervised your employment?

A. That would be Mike Miller.

Q. Do you know who Mike Miller reported to at the time Roberta King supervised your employed?

A. I presume Jerry Batt.

Q. Do you know for sure?

A. No.

Q. Did the group that reported up to Ted Stock have a name of any sort? Was it identified as a particular work group at Sprint?

A. They changed names a lot, so I didn't pay much attention to it. Offhand, I don't recall.

Q. While you were employed at Sprint, did other individuals transfer in and out of your work group?

A. Yes.

Q. Was that true of people who were over forty as well as those who were under forty?

[32] A. Yes.

Q. How many individuals transferred in and out of the groups that you worked in?

A. I have no way of knowing that.

Q. When I say work groups, do you understand I mean up to your director level?

A. I presumed that.

Q. How many data analyst III's were there at the time your employment was separated that reported up to Roberta King?

A. I believe just me.

Q. Do you know how many data analyst III's reported up to Ted Stock at the time of your separation of employment?

A. No, I do not.

* * *

[106] Q. Ms. Wood, do you claim that Sprint maintained any discriminatory policies?

A. Not that I'm aware of, not official ones.

Q. Are you aware of any unofficial policies that Sprint has that are discriminatory because of people's ages?

A. I don't know how to answer that. Except by actions, no.

Q. Are you aware of any procedures at Sprint that are discriminatory against employees because of their age?

A. I'm not aware of.

Q. Are you aware of any practices by Sprint that are discriminatory because of people's ages?

A. Offhand, no.

* * *

[108] * * *

Q. Previously you mentioned you were aware that Ellen Mendelsohn had raised complaints of age discrimination; is that right?

A. Yes, that's right.

Q. How were you aware of that?

A. I was told by the attorneys.

Q. Do you know Ellen Mendelsohn's last job title at Sprint?

A. No idea.

Q. Do you know what her last job period was at Sprint?

A. No idea.

Q. Do you know what organization she worked?

[109] A. No idea.

Q. Do you know who she reported to?

A. No idea.

Q. Do you know what location she worked in?

A. No.

Q. Do you know if she was exempt or non-exempt employee?

A. No idea.

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Q. Do you know what her performance ratings were?

A. No, I don't.

Q. Do you know what her compensation was?

A. No.

Q. Do you know Ellen at all?

A. No.

Q. Have you ever met her?

A. Not that I know of.

Q. Have you ever spoken with her?

A. Not that I know of.

* * *

[111] * * *

Q. Do you know how the decision was made that Ellen Mendelsohn's employment was terminated?

A. No.

* * * *

APPENDIX U-2 — EXHIBIT B
EXCERPTS FROM DEPOSITION TRANSCRIPT
DATED APRIL 24, 2004
(BONNIE L. HOOPES)

[Commencing at Page 21]

Q. And what position were you rehired into in March of '97?

A. Quality manager.

Q. How long did you hold the position of quality manager at Sprint?

A. Approximately two years.

Q. So at some point in time in 1999?

A. Yes.

Q. What was your next role at Sprint following your role as a quality manager?

A. Program manager for Y2K.

Q. And was the change in jobs from quality manager to program manager in Y2K a promotion?

A. No.

Q. Was it a demotion?

A. Yes.

Appendix U-2

Q. Your age at that time would have been 44 years old; is that right?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Were you given any awards for your role in Sprint's Y2K compliance efforts?

A. Yes, I was.

Q. What award was that?

[22] A. The Sprint Values Excellence Award.

Q. Is that an individual award or team award?

A. It was for our team.

Q. How many people were on that team?

A. Approximately six.

Q. Do you recall who led that team?

A. Bob Baranek.

Appendix U-2

Q. What was your role on that team?

A. I was senior manager of projects.

Q. Do you know how many annual Sprint Values Excellence Awards were given to teams at Sprint?

A. No.

Q. Do you know how many were given in 1999?

A. No, I do not.

Q. What was your next role after program manager of Y2K?

A. Senior manager of — I believe it was strategic initiatives.

Q. When did you start in your role as a senior manager of strategic initiatives?

A. I believe it was like April of 2000.

Q. And was the change in roles from program manager Y2K to senior manager of strategic initiatives a promotion?

[23] A. No.

Q. Was it a lateral move?

A. Yes.

Appendix U-2

Q. What was your next role after senior manager of strategic initiatives?

A. My title stayed the same, but I did different duties.

Q. Did you have any roles other than senior manager of strategic initiatives between April of 2000 and the time of your separation of employment from Sprint?

A. I'm sorry, could you say that again?

Q. Did you have any roles other than senior manager of strategic initiatives from April of 2000 to the time of your separation of employment at Sprint? Let me ask it another way.

A. Please.

Q. Was the senior manager of strategic initiatives the last position you held at Sprint?

A. Yes.

Q. What location did you work from as a project manager of Y2K?

A. 9221 Ward Parkway.

Q. What location did you work from as a senior manager of strategic initiatives?

[24] A. The PCS building at College and Lowell.

Appendix U-2

Q. Did you ever work out on Sprint's campus?

A. No.

Q. What was your job grade as a senior manager of strategic initiatives?

A. Seventy-nine.

Q. And I believe you've previously mentioned that at some point in time your responsibilities as a senior manager of strategic initiatives changed; is that correct?

A. That's correct.

Q. What were your responsibilities as a senior manager of strategic initiatives when you started in April of 2000?

A. I'm sorry, I can't recall at this time.

Q. What were your responsibilities after they changed as a senior manager of strategic initiatives?

A. I went into project management.

Q. When did that happen?

A. Like at the end of 2000.

* * *

Appendix U-2

[38] * * *

Q. Who was your supervisor when you started working as senior manager of strategic initiatives?

A. I can't recall her name. I can see her, but I can't recall her name.

Q. Did your supervisor change at any time while you were a senior manager of strategic initiatives?

A. Yes.

Q. Who supervised your employment as a [39] senior manager of strategic initiatives while you were employed at Sprint?

A. The one woman that I can't recall her name who hired me into PCS. Sharon Vorhies and Chrystal Cone.

Q. What was the age of the woman whose name you can't recall who hired you into PCS?

A. I believe she was in her forties.

Q. And Sharon Vorhies, what was her age at the time she supervised your employment?

A. She was in her thirties.

Appendix U-2

Q. And Chrystal Cone, what was her age while she supervised your employment?

A. I believe she was in her forties.

Q. The woman who hired you into PCS, whose name you can't recall, who was her supervisor?

A. His name was Bob, but I cannot recall his last name.

Q. Who was Sharon Vorhies' supervisor when she supervised your employment at Sprint?

A. Ferrie Kizzire.

Q. F-E-R-R-I-E.

A. I don't know.

Q. Who was Chrystal Cone's supervisor at the time she supervised your employment?

[40] A. Allen Winters.

Q. Do you know who Ferrie Kizzire's supervisor was at the time that Sharon Vorhies supervised your employment?

A. No, I don't remember.

Appendix U-2

Q. Do you know who Allen Winters' supervisor was at the time Chrystal Cone supervised your employment?

A. I believe it was Tony Castanon.

Q. Do you know who Tony Castanon's supervisor was when Chrystal Cone supervised your employment?

A. I don't recall his name.

Q. How long did the woman whose name you don't remember, who hired you into PCS, how long did she supervise your employment?

A. Approximately a year.

Q. And how long did Sharon Vorhies supervise your employment at Sprint?

A. I'd say approximately six months.

Q. And how long did Chrystal Cone supervise your employment at Sprint?

A. Approximately four months.

Q. Was Chrystal Cone your supervisor at the time your employment was separated in November of [41] 2002?

A. Yes.

* * *

Appendix U-2

[49] * * *

Q. When were you notified of your separation of employment from Sprint?

A. November 2002.

Q. Do you remember the day?

A. I believe it was the 22nd.

Q. And who told you of your separation of employment from Sprint?

A. Chrystal Cone.

[50] Q. And what did Chrystal tell you at the time that she told you your employment was being separated on November 22nd, 2002?

A. That my job was eliminated.

Q. Did she tell you anything else?

A. She gave me a packet.

Q. Anything else?

A. No.

Q. Did she tell you why your employment was being separated from Sprint?

A. Because my job was eliminated.

Q. Any other reasons given?

A. No.

* * *

[109] * * *

Q. So you worked for Ellen Mendelsohn between 1991 and 1993; is that correct?

A. Yes.

Q. Did you ever work for Ellen Mendelsohn after 1993?

A. No, I don't believe so.

Q. Did you have occasions as part of your job responsibilities at Sprint after 1993 to interact with Ellen Mendelsohn?

A. As part of my job responsibility?

Q. Yes.

A. No.

Appendix U-2

Q. Did you ever live with Ellen Mendelsohn at any point in time?

A. No.

Q. There was a document in your personnel [110] records that includes Ellen Mendelsohn's address. I think it was listed as one of your own so that's the only reason I asked. I was just curious.

A. No.

Q. Do you know what Ellen Mendelsohn's performance feedback was in her last role at Sprint?

A. I know what she told me.

Q. What was that?

A. That it was unfavorable.

Q. Do you know who gave her that feedback?

A. I don't recall the gentleman's name.

Q. Do you know Ellen Mendelsohn's last job title at Sprint?

A. I don't recall the exact title, no.

Q. Do you know what her last job grade was at Sprint?

A. Yes.

Q. What was that?

A. Seventy-nine.

Q. Do you know what organization she worked in at Sprint?

A. I don't know what they called themselves.

Q. Okay. Business development and strategy group ring a bell?

[111] A. Yes.

Q. While you were employed as a senior manager of strategic initiatives, did you interact with the business development and strategy group?

A. No.

Q. Did you ever work with a gentleman by the name of Jim Fee while you were employed at Sprint?

A. Jim Fee?

Q. Yes.

A. No.

Appendix U-2

Q. Did you ever work with a gentleman by the name of Paul Reddick while you were employed by Sprint?

A. No, not that I can recall.

* * * *

APPENDIX U-3 — EXHIBIT C
EXCERPTS FROM DEPOSITION TRANSCRIPT
DATED APRIL 23, 2004
(SHARON MILLER)

[Commencing at Page 70]

* * *

Q. Did Noel supervise your employment after Cloene Davis retired?

[71] A. Yes, he did.

Q. Did you continue to perform your ordinary job duties after Cloene Davis retired?

A. Yes.

Q. And when did Noel Strong suggest that you should look for other work at Sprint?

A. As soon as I was aware that — there were a few days between the time that Cloene's leaving the company was announced and the announcement came out that told us who we reported to. I learned it through Noel that I was reporting to him and I set up an appointment to speak with him. It was within a few days after Cloene's leaving.

Q. Did you know what Noel Strong's age was at the time that you began reporting to him?

A. No, I don't know. I don't know his age.

Q. Did you know what Noel's position was?

A. Yes, it was director.

Appendix U-3

Q. So you went from reporting to a VP to a director after Cloene Davis retired; is that right?

A. That's correct.

* * *

[122] * * *

Q. Do you know what Ellen Mendelsohn's job title was while she was employed at Sprint?

A. No, I don't.

Q. Did you ever have any opportunity to interact with Ellen Mendelsohn while she was employed at Sprint?

A. No.

Q. Do you know what Ellen Mendelsohn's job grade was when she was — her employment with Sprint was separated?

A. No, I don't.

Q. Do you know what organization Ellen Mendelsohn worked in?

A. No.

Q. Do you know who she reported to?

A. No.

Q. Do you know which location she worked at?

A. No.

Q. Do you know what performance ratings [123] Ms. Mendelsohn was given?

A. No.

Q. Do you know how long Ms. Mendelsohn was at Sprint?

A. No.

Q. Do you know what Ms. Mendelsohn's compensation was?

A. No.

Q. Have you ever met Ellen Mendelsohn?

A. Not that I recall. Her name doesn't — her name kind of sounds familiar, but working in a large organization, it's hard to know whether you've ever had contact. I don't recall ever having met her.

Appendix U-3

Q. While you were employed at Sprint, did your job responsibility ever require you to interact with the BD&S organization at Sprint PCS?

A. No, I'm not.

Q. Business development and strategy, does that help refresh your recollection in any way?

A. I remember that — I didn't remember the acronym, but I do remember the business development and strategies. I don't believe I ever interacted with anyone in that organization.

* * * *

APPENDIX U-4 — EXHIBIT D
EXCERPTS FROM DEPOSITION TRANSCRIPT
DATED APRIL 19, 2004
(JOHN BOREL)

(Commencing at Page 10) * * *

Q. What office did you work from while you were employed by Sprint?

A. I worked in the STIC Lab. It was — when I first joined it was called the voice activated [11] dialing team, and we basically brought in new voice-activated software, tested it before deploying it into the field.

Q. STIC Lab for our court reporter's sake is S-T-I-C; is that correct?

A. S-T-I-C.

Q. That's an acronym?

A. Sprint Technology Integration Center.

Q. You said you brought in new voice software for Sprint; is that right?

A. Well, we worked with IBM. Most of our — most of the software was from IBM.

Q. Were those the same responsibilities that you had at the time your employment with Sprint was terminated?

A. Yes.

Appendix U-4

Q. You implied that the name had changed from voice activated drafting team. Did it change at any time?

A. Voice activated dialing team. It changed about the time I got laid off. I don't have the — I don't remember the exact name, but it was very similar, did the same thing.

Q. Your responsibilities didn't change, just the name of the team changed; is that right?

[12] A. Exactly.

Q. What was your title when you were first employed by Sprint?

A. I was Project Manager 3.

Q. While you were employed at Sprint, did you have any job titles other than Project Manager 3?

A. No.

Q. Do you recall what your job grade was as a Project Manager 3?

A. I was a 76.

Q. Did you understand what the significance of being a job grade 76 level employee was at Sprint?

A. Yes, I did.

Q. What was that?

A. Well, in the project management area, there were certain things that I was supposed to be able to do at that level and as you go higher, those duties increase in complexity, that kind of thing.

Q. Can you describe the functions of your role as a Project Manager 3 at Sprint?

A. Yes. I basically was in charge of monitoring our software testing within our team [13] and whenever we would identify software problems, I was in charge of holding weekly meetings or sometimes even daily to try and resolve those so we could get fixes made to the software in time to deploy to the field as quick as possible.

Q. How many project management — strike that. How many Project Manager 3 positions were there on the voice activated dialing team when you started?

A. Just one, mine.

Q. Who else was on the voice activated dialing team when you started in November 2000?

A. Well, there were seven engineers and my manager, Janet Mathus.

Appendix U-4

Q. Were you ever asked to perform the functions of an engineer?

A. No.

Q. Were you qualified to do the function of an engineer?

A. I was not.

Q. Was the voice activated dialing team part of a bigger organization at Sprint?

A. Yes, it was.

Q. What was that called?

A. It was a director at — I forgot the [14] name. It's a certification directorate. I forget the exact name, but that was part of it.

Q. What do you mean by certification directorate?

A. Well, we certified software before it went to the field to support our customers and that's what our directorate did. We worked in four different teams to bring in new software to improve the Sprint system, and it was certified and fielded to our customers.

Appendix U-4

Q. So we're on the same page if I use the term "certification directorate team," you understand that means a broader group that the voice activated dialing team was a part of?

A. Yes.

* * *

[17] Q. Who was your supervisor at the time your employment began in November of 2000?

A. Janet Mathus.

Q. Do you know if Janet is the one who decided to offer you employment at Sprint?

A. Yes, she did.

Q. Who did Janet report to — strike that. Did your supervisor ever change at any time while you were employed at Sprint?

A. No.

[18] Q. Who did Janet report to in November of 2000? When I say "Janet," I mean Janet Mathus.

A. You know, we were in a bit of transition there when I first came on board. I don't think they had a director at all and I don't know who was actually — I don't know who she was reporting to to tell you the truth. I think she was even

acting at some point in time as director, I don't know. They were just forming the group and, you know, it was very new and I really didn't know a whole lot about, you know, that process of transition. I just joined the team, so I had never met a director at that time.

Q. Who was Janet Mathus' supervisor at the time your employment was terminated from Sprint?

A. Mohammad Hussain.

Q. Do you recall Janet Mathus reporting to anyone other than Mohammad Hussain while you were employed at Sprint?

A. Unless there was someone early on it that process of transition, he's the one that came in and took over.

Q. Okay. Who did Mohammad Hussain report to at the time of your termination of employment?

A. Mihwa. I forget her last name. She was [19] a senior vice president of the STIC Lab.

Q. Do you know who Mihwa reported to at the time of your termination of employment?

A. I think Dennis Huber, you know, there could be layers between those two. Dennis Huber was senior vice president in charge of PCS.

Q. He was in charge of all of the PCS as far as you know?

A. He was a senior vice president within PCS. He wasn't the head guy, but he was pretty high up.

Q. Do you know who Dennis Huber would have reported to at the time of your termination of employment?

A. You know, I know I've heard the name, I don't — I really don't know.

Q. Other than Mihwa, do you know if Mohammad Hussain had reported to anyone else while you were employed at Sprint?

A. I don't think so.

Q. Prior to your termination of employment, had you applied for any other positions at Sprint?

A. Prior to my termination?

Q. Let me rephrase that. Prior to your termination of employment, had you applied for any [20] other position at Sprint between the time of your — strike that. I'm struggling, I apologize. While you were employed at Sprint, did you apply for any other role?

A. Only during my transition process after I was laid off.

Appendix U-4

Q. While you were employed by Sprint, did anybody ever tell you you could not apply for employment for other positions at Sprint?

A. I wasn't allowed to for a while, but they changed their mind.

Q. When were you not allowed to apply for other positions at Sprint?

A. Well, a week prior to me being laid off, I went to talk to Jay Cole who was the manager within our directorate who had a vacant PM position. He was wanting me to take that job and work with him and as — after I got laid off, I put in for that position and he had told me that I was not allowed to put in for this because I had been banned and that I had an adverse rating in my file.

Q. Do you remember the day that you spoke to Jay Cole?

A. It was about a week before I got laid [21] off. I got laid off on the 26th of February, 2003, so a week prior to that I guess, that time frame.

Q. Somewhere around February 19th of '03; is that correct?

A. I don't remember that exact date, but it was a weekday, it was not a weekend. I don't remember the date.

* * *

Appendix U-4

[22] * * *

Q. Was anybody else with you when you spoke with Jay Cole about a vacant position?

A. No. He and I sat down, we went to a conference room and we talked about the position. He told me he thought I would be a very good fit for the job and that he wanted me on his team. I said, well, I would sure like to make the transition and he said he would talk to Mohammad Hussain about it.

Q. Did you approach your Mr. Cole about the position or did he approach you?

A. I think I approached him and then we set up a time to have me come in and talk to him about it. Not as a formal interview, but just to discuss the position and at that time he wanted me [23] to apply for the job.

Q. Did you apply for the job?

A. Yes, I did.

Q. When was that?

A. That was after I was laid off. I finally got through HR a copy of the JIR, they call it job interest, job information request or interest request, something like that. They sent it to me at my home. I filled it out in an hour or two, sent it right back in order to get my name in for that job.

Appendix U-4

Q. Did you fill that form out completely?

A. I did.

Q. Did you fill it out truthfully?

A. Yes, I did.

Q. Why did you approach Mr. Cole about this open project manager 4 position?

A. Well, I tell you what, I thought it would be a good position for me to get into. I knew Martina Howell, she had enjoyed it a lot. We were actually going through a big transition and that particular position was going to be the focal point dealing with the contract folks on different projects. So it would have changed my job from monitoring software testing to dealing with [24] contracts. And as I understood it, the major programs were coming into the STIC Lab interdirectory and I would really be at a different level, hopefully it would be a promotion in it for me.

Q. Were you dissatisfied working for Janet Mathus?

A. I can't say I was dissatisfied. I enjoyed my time on the team, however it was getting a little rougher to work for Janet.

Q. Why was it getting rougher to work for Janet?

A. Well, to tell you the truth, Janet was — I think she was a little intimidated by me. I think she was trying to at

times make me look bad in front of the rest of the team, and I think she felt threatened by me because I had experience and I had been a manager for 30 years in the Army and I can't tell you all the details that made her feel like that, but she definitely held things back from Mohammad about me such as my completing a master certificate in project management. I completed that before I got terminated and she never told the director about it for me to be recognized.

* * *

[99] * * *

Q. Do you know what Ellen Mendelsohn's job title was at Sprint?

A. No, I don't.

Q. Do you know what her job grade was?

A. No.

Q. Do you know which organization she worked in?

A. No.

Q. Do you know who she reported to?

A. No.

Q. Do you know which location she worked at?

A. No.

Appendix U-4

Q. Do you know what performance feedback she received?

A. No.

Q. Do you know how long Ellen Mendelsohn was at Sprint?

[100] A. I don't know anything about Ellen Mendelsohn other than she was discriminated against.

Q. How do you know that?

A. At least she thinks she was.

Q. So your understanding is that she was discriminated against is based upon her belief?

A. Based on what was done to me.

Q. So you think because you think you were discriminated against because of your age Ellen was as well?

A. Well, she obvious thinks that. I don't know her personally so I can't say.

* * * *

APPENDIX U-5 — EXHIBIT E
EXCERPTS FROM DEPOSITION TRANSCRIPT
DATED APRIL 24, 2004
(JOHN E. HOOPES, JR.)

(Commencing at Page 7) * * *

Q. What was your last day of work at Sprint?

A. February — I think it's February 8th, 2002.

Q. At any time between 1986 and February of 2002, did you work anywhere other than Sprint?

A. No.

Q. You were continuously employed by Sprint [8] from 1986 until February of 2002; is that correct?

A. Yes, sir. You know, I left out in between working as a manager of technical training and manager of CTI, I was senior technical consultant for the — anyway, the national accounts out of Philadelphia, Pennsylvania.

Q. Was that a sales position?

A. That was — both the technical consultant and the senior technical consultant were sales support; in other words, I was paid a salary, but not commission.

Q. And you moved to Pennsylvania. What year was that?

A. I'm sorry, I really don't remember exactly, you know, just don't remember.

Appendix U-5

Q. Did you move to Pennsylvania because your wife was working there?

A. Yes, sir. Yes, sir.

Q. So you actively sought employment with Sprint in Pennsylvania?

A. Yes.

Q. What was your position after project manager for CTI?

A. Senior programmer 5.

Q. Was that a software engineer position?

[9] A. Yeah, software engineer 5.

Q. And did you have any positions at Sprint other than — strike that. What was your next position at Sprint after this?

A. That was my final position.

Q. I didn't ask that very well. I appreciate you anticipating my question. All right. You're changing jobs from a technical consultant to a technical trainer. Was that a promotion?

A. Yes, yes.

Q. And the change in jobs from a technical trainer to a senior technical consultant for national accounts, was that a promotion?

A. Yes.

Q. And when your job changed from senior technical consultant of national accounts to a manager of technical training, was that a promotion?

A. I think, yeah, that was a promotion.

Q. Okay. And change in jobs from manager of technical training to project manager of CTI, was that a promotion?

A. Yes.

Q. Then when your job changed from project [10] manager of CTI to senior — strike that. To software engineer 5, was that a promotion?

A. No.

Q. Was that a demotion?

A. No. That was a lateral. I believe that was a lateral.

Q. Were you ever demoted while you were employed at Sprint?

A. Yes.

Appendix U-5

Q. When were you demoted when you were employed at Sprint?

A. When I was a manager of technical training, I was demoted back to technical trainer.

Q. When was that?

A. That was just before we went to Philadelphia, Pennsylvania, about a year before we went to Pennsylvania.

Q. Do you know what your age was at the time?

A. Forty-three, 44, something like that.

Q. Did you believe the demotion back to a technical trainer position was because of your age?

A. No.

Q. Why was your position changed from [11] manager of technical training to technical trainer?

A. Because my vice president said to.

Q. Other than the position you held as a senior technical consultant for national accounts in Pennsylvania, were all of your other positions at Sprint in the Kansas City area?

A. Yes.

Appendix U-5

Q. What was your job grade at the time of your separation of employment from Sprint?

A. I believe it was 76.

* * *

[17] * * *

Q. Terri Reynolds was your manager at the time your employment was separated by Sprint?

A. Uh-huh.

Q. Is that a yes?

A. Yes. I'm sorry, yes, it was a yes.

* * *

[18] * * *

Q. Who did Skip report to when — I guess that's a man; right?

[19] A. Yes.

Q. Who did Skip report to when Skip managed your performance?

A. The same director that Terri reported to.

Appendix U-5

Q. Who was that?

A. I'm sorry, I'm terrible with names, I really can't remember his name.

Q. What was the director's age when you reported up to the director through Skip and Terri?

A. I remember that he was getting ready to retire. His comment when we were — when I was laid off anyway was that he was getting ready to retire.

Q. And do you recall who this director reported to while Terri and Skip supervised your employment?

A. There were two vice presidents and I don't remember any of this. It's terrible, but I don't remember names. One was a male and he was replaced by a female.

Q. Was the woman Carol Gast?

A. I believe so. I believe so. That sounds very familiar, yes.

Q. Do you know what Carol's age was at the [20] time that Skip and Terri supervised your employment?

A. It's kind of hard to estimate a woman's age, so somewhere between 35 and 45.

* * *

Appendix U-5

[25] * * *

Q. When were you told of your separation of employment from Sprint?

A. February 8th.

Q. That was 2002?

A. 2002.

Q. Did you work at any time for Sprint after February 8th, 2002?

A. No.

* * *

[26] * * *

Q. Who told you your employment with Sprint was being separated?

A. Informally I was told by my manager on the way to my director's office and formally I was told by my director.

Q. Your manager at the time was?

A. Terri Reynolds.

Appendix U-5

Q. Who was your director?

A. I don't remember, I'm sorry. I apologize, I just don't remember at this time.

Q. Did Terri Reynolds tell you why your employment with Sprint was being separated?

A. No.

Q. Did your director tell you why your employment with Sprint was being separated?

A. From what I recall, I believe he said they were downsizing.

Q. Did your director tell you why others were being retained by Sprint?

A. No.

* * *

[65] * * *

Q. Mr. Hoopes, do you know Ellen Mendelsohn?

A. Only through my wife.

Q. Have you ever met Ellen?

A. Yes.

Q. When was that?

A. Several different occasions, usually social functions that were for my wife's work at Sprint. Occasionally when I visited my wife's job, I would meet Ellen.

Q. This was while your wife worked for Mrs. Mendelsohn?

A. Well, even when she wasn't working directly for her, they were —

[66] Q. Have you spoken with Mrs. Mendelsohn regarding her claims against Sprint?

A. No.

Q. Do you know what Ellen Mendelsohn's job title was at the time her employment was separated?

A. No, I do not.

Q. Do you know what her job grade was at that time?

A. No.

Q. Do you know what organization she worked in at the time of her separation?

A. To be honest with you, no. Not to be honest with you, but honestly, no, I don't know what she —

Appendix U-5

Q. Do you know who Mrs. Mendelsohn reported to at the time of her separation of employment?

A. No, I have no knowledge of that.

Q. During your employment at Sprint, did you have an opportunity to work with Sprint PCS business development and strategy group?

A. No, not that I'm aware of.

Q. Did you ever have a chance to observe Mrs. Mendelsohn's performance as an employee of Sprint?

[67] A. No.

Q. Never your responsibility to rate her performance?

A. No.

Q. Do you know what performance feedback Mrs. Mendelsohn received while she was employed at Sprint?

A. No, I have no idea.

Q. Do you know how Mrs. Mendelsohn was compensated?

A. No, no idea.

* * * *

APPENDIX V — JUDGMENT IN A CIVIL CASE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS FILED JANUARY 13, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

CIVIL NO.
03-2429-KHV

ELLEN J. MENDELSOHN

v.

SPRINT/UNITED MANAGEMENT COMPANY

JUDGMENT IN A CIVIL CASE

(X) **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

( ) **DECISION BY THE COURT.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED plaintiff to take nothing and the action is dismissed on the merits.

Dated: January 13, 2005

RALPH L. DeLOACH, CLERK

s/ Linda South
Linda South, Deputy Clerk

APPENDIX W — PLAINTIFF'S MOTION FOR NEW TRIAL AND SUGGESTIONS IN SUPPORT OF MOTION DATED JANUARY 28, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff Ellen Mendelsohn, through counsel, hereby files her Motion for New Trial, stating as grounds the following:

1. The Verdict was rendered January 13, 2005. Judgment was entered on January 13, 2005.

2. This Motion is timely, in that Rule 59 requires that a motion for new trial be filed no later than ten days after the entry of Judgment. Under Rule 6, "When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation." Rule 6 defines "legal holiday" as including the birthday of Martin Luther King.

3. Thus, because the date of the entry of Judgment is not counted, and because intermediate Saturdays, Sundays and Martin Luther King's birthday holiday shall not be counted, this Motion is timely if it is filed on or before Friday, January 28, 2005.

4. Plaintiff's ground for her Motion for New Trial is the prejudicial exclusion of evidence. The particular grounds are that the Court erred in precluding plaintiff, in an Order in Limine entered before any evidence was proffered during trial, from putting on evidence concerning other satisfactorily-performing, long-service older employees terminated in the same PCS reduction-in-force, in the same or similar time frame, as plaintiff. The ruling was overly restrictive, by requiring that employees could not testify unless supervised by Paul Reddick. This exclusion is far too narrow under Tenth Circuit law, and allowed the defendant to prejudicially argue that there was no "pattern" of age discrimination by Reddick, because plaintiff was, according to defendant, the only person over 40 terminated "by Reddick." A true (and totally different) picture would have been presented if plaintiff had been allowed to present the evidence proffered by plaintiff in her "Offer of Proof" (copy attached), filed per the direction of the Court's Clerk, before the close of plaintiff's case-in-chief.

5. Legal authority was presented to the Court in opposition to defendant's Motion in Limine, and is set forth in Suggestions in Support, which accompany this Motion.

Appendix W

Respectfully submitted,

THE POPHAM LAW FIRM, P.C.

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ATTORNEYS FOR PLAINTIFF

Appendix W

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

SUGGESTIONS IN SUPPORT OF PLAINTIFF'S MOTION FOR NEW TRIAL

Defendant, in its Motion in Limine briefing misstated Tenth Circuit law, and in turn misled the Court: "Because the law is clear that discrimination against other employees *may be relevant only if it involves the same decision maker involved in plaintiff's termination and same levels of responsibility as plaintiff*, Sprint's Motion in Limine regarding broad allegations of age discrimination should be granted."[1] (italics added). The law is *not* as defendant posits, as plaintiff pointed out in opposition to the Motion in Limine.

And yet, the Court ruled in its Order in Limine that plaintiff could *not* present evidence through other RIF'd employees, unless their decisionmaker was Paul Reddick.

1. *See* Defendant's Reply to Plaintiff's Memorandum in Opposition to Motion in Limine, page 3.

Appendix W

The Court remained solid in its decision, so to preserve the record, plaintiff made an Offer of Proof regarding similarly-situated employees terminated as part of the same Sprint reduction-in-force that also resulted in Plaintiff Ellen Mendelsohn's termination. Plaintiff has attached the Offer of Proof to the Motion so as not to unduly lengthen these Suggestions.

The Court's ruling unfortunately prejudiced plaintiff by giving defendant an unfair advantage at trial. For example, the Court will recall that by virtue of plaintiff being prevented from presenting evidence that other older employees who, like plaintiff, also had been rated satisfactorily for a number of years yet also were terminated, under pretextual circumstances, defendant was allowed to argue to the jury (1) that there was no "pattern" of age discrimination by Paul Reddick; and (2) that the only employee over the age of 40 terminated as a result of decision making "by Paul Reddick" was Ellen Mendelsohn. Defendant thus was allowed to mischaracterize Ellen Mendelsohn as a solitary, isolated "poor performer" who just got caught up in the financial crunch.

The Excluded Evidence

Plaintiff Ellen Mendelsohn was falsely seen as an isolated case. What a different picture if plaintiff had been able to present that an employee such as Bonnie Hoopes: rated predominantly as an "Exceeds Expectations" (a "2") in the years just before the roll-out of the new Alpha LINK, Bonnie plummeted to a "4" and the lowest possible Alpha level ("S"). Bonnie Hoopes was told her PCS job was

"eliminated" (the same day as plaintiff), yet she learned (just like plaintiff) that three different individuals, including two in their early 30s took over her job. Bonnie Hoopes (like Ellen Mendelsohn) had "the most seniority" in her group. Her supervisor "told me I was too old for the job." Bonnie Hoopes' supervisor also gave Hoopes an e-mail in February of 2002 (around the time of the roll-out of the "Alpha" rating system), stating a management preference for employees "blessed with lots of runway ahead of them."

Yvonne Wood and Sharon Miller also were in the PCS Organizations, in an IT area headed up by Chief Information Officer (CIO) Jerry Batt. Batt was a peer of Bill Blessing, the Vice President of Business Development & Strategy (BDS) who testified at trial. Ms. Miller and Ms. Wood also were terminated as part of a Sprint PCS RIF in November, 2002 and January, 2003. Both were solid performers, replaced by younger, less-experienced employees. Both heard age-derogatory comments from supervisors. John Hoopes is the husband of Bonnie Hoopes. He also was terminated by Sprint as part of a reduction-in-force. Part of his testimony, if allowed, would have included his 16-year record of high performance, the lack of any performance reason for his termination, and the fact that despite going through Right Management and applying for as many as 15 to 20 Sprint jobs in a given day, he was never offered another position, despite his qualifications.

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The Pretrial Exclusion Prejudiced Plaintiff's Case

As pointed out in previous briefing, *Spulak v. K-Mart Corporation*, 894 F.2d 1150 (10th Cir. 1990) allows evidence from other employees about the circumstances under which they left their employment even though they worked in a different location and under *different* supervisors. In *Spulak*, two employees who testified "worked in the same state as Spulak and were fired within a very short time after Spulak left K-Mart." *Id.* at 1156-57, n. 2. *Spulak* involves a corporate restructuring (or reduction-in-force), and *Spulak* declares the general rule for admissibility rather categorically:

> As a general rule, the testimony of other employees about their treatment by the defendant is relevant to the issue of the employer's discriminatory intent. *See, e.g. Hunter v. Allis Chalmers Corp.*, 797 F.2d 1417, 1423-24 (7th Cir. 1986) . . . ; *Stumph v. Thomas & Skinner, Inc.*, 770 F.2d 93, 97 (7th Cir. 1985) (ADEA); *Phillips v. Smalley Maintenance Services, Inc.*, 711 F.2d 1524, 1532 (11th Cir. 1983) . . . ; *Morris v. Washington Metropolitan Area Transit*, 702 F.2d 1037, 1045-46 (D.C. Cir. 1983) . . . ; *Harpring v. Continental Oil Company*, 628 F.2d 406, 409 (5th Cir. 1980)(ADEA).

The cases from sister circuits cited by the Tenth Circuit in *Spulak* do not stand for defendant's narrow proposition that a plaintiff *must* show action taken by the same supervisor, against employees with the "same level of responsibility as plaintiff." It is the corporation, not the supervisor, whose practices and conduct is at issue.

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Plaintiff also cited *Bingman v. Natkin & Company*, 937 F.2d 553 (10th Cir. 1991): Also an ADEA case . . . also involving a RIF . . . also *not* requiring the showing of "same supervisor" that Sprint represents. In *Bingman*, defendant laid off 350 field workers during 1985. Three men would be laid off in the support operation — two from the "mechanical side" of the warehouse where plaintiff worked, and one from the "sheet metal side." Plaintiff and Melvin Mitchell, a truck driver, were terminated on the "mechanical side," and Oswat, a fork life operator, was terminated from the "sheet metal side." Similar to Ellen Mendelsohn's case, plaintiff's job was taken over by younger men with less seniority, but two 60-year-old employees *were kept on* after plaintiff was terminated.

Nonetheless, at trial, the Court allowed plaintiff to show that one year after plaintiff was terminated, an employee named Lopez, age 60, who had remained after the plaintiff was terminated, "**lost his job at the next reduction-in-force, which occurred about one year after Bingman lost his job.**" (bold added) *Id.* at 556. This evidence was received over defendant's objection that "circumstances were different at that later time." 937 F.2d at 556. Importantly, the trial court ruled "that the Lopez termination was close enough in time to be evidence of defendant's practice in terminating older employees . . . . There was also evidence that another employee, Welch, age 60, was also terminated in a reduction-in-force." *Id.* at 556. Citing *Spulak v. K-Mart*, the Tenth Circuit in *Bingham* ruled (at 556-57):

> Evidence concerning the makeup of the employment force and events which occurred after

> plaintiff's termination were entirely relevant to the question of whether or not age was one of the determinative reasons for plaintiff's termination; and, as the trial court found, evidence not too remote in time that defendant terminated others in the 60-year-old age group would be entirely relevant to the question of defendant's policies and practices.

Evidence endorsed *and* approved as admissible in *Bingman* related to employees terminated in a reduction-in-force up to *one year after* the plaintiff. There is no mention that such evidence "must" involve the same decision maker. The Tenth Circuit in *Bingham* also rejected defendant's arguments that it was surprised and prejudiced:

> Defendant had an opportunity to present evidence and explain the later terminations and did present testimony that Welch, an assistant mechanic, did not have the same qualifications as Cole, the head mechanic, who was retained.

Id. at 557. Approving the admission of the evidence, the Court observes, "The jury was entitled to judge the credibility of the witnesses, to resolve conflicts of evidence in plaintiff's favor, and to find that plaintiff's age was a determinative factor in defendant's decision to terminate his employment." *Id.* at 557.

Similarly, *James v. Sears Roebuck & Company, Inc.*, 21 F.3d 989 (10th Cir. 1994) supports admission of testimony from similarly-treated employees — even if working *outside*

Ms. Mendelsohn's BDS organization. There, the Tenth Circuit affirmed jury verdicts for six ADEA plaintiffs forced out during a purported "corporate efficiency move," described by the Tenth Circuit as "**a corporate attempt to reduce payroll costs by replacing experienced and well paid workers 40 years of age or older with lesser experience and lower paid younger workers.**" (bold added) *Id.* at 991. The quoted portion aptly describes a prong of the case Ellen Mendelsohn was trying to present. The evidence received in that case came from plaintiffs in different organizations: the Ogden, Utah Service Center; and a retail store. Granted, the plaintiffs in *James* had their claims tried in the same trial before the same jury. But a close reading of *James* will show that the evidence of the defendant's similar treatment of all of those similarly-situated older employees was analyzed as being relevant and probative of each of their age discrimination claims.

The cited cases show that "pattern and practice" allegations need not be at issue: *Spulak* is an individual case. So is *Kingman*. So also *Greene v. Safeway Stores, Inc.*, 98 F.3d 554 (10th Cir. 1996); *aff'd after remand*, 210 F.3d 1237 (10th Cir. 2000). In *Greene*, The Tenth Circuit cites favorably the law from other Circuits that has declared over the years that evidence from other employees should be admitted in employment lawsuits. Eighth Circuit law is particularly instructive, particularly on the dangers of blanket *pretrial* evidentiary exclusions.

Evidence tending to show a climate of age bias "is indeed relevant to proving a particular instance of discrimination" in *all* discrimination cases, for the very reason that "plaintiffs

face the difficult task of persuading the fact finder to disbelieve an employer's account of its own motives." *See Estes v. Dick Smith Ford, Inc.*, 856 F.2d 1097, 1103 (8th Cir. 1988):

> Circumstantial proof of discrimination typically includes unflattering testimony about the employer's history and work practices — evidence which in other kinds of cases may well unfairly prejudice the jury against the defendant. In discrimination cases, however, such background evidence may be critical for the jury's assessment of whether a given employer was more likely than not to have acted from an unlawful motive.

Id. at 1103. *See also Hawkins v. Hennepin Technical Center*, 900 F.2d 153, 155-56 (8th Cir. 1990) (citing *Estes*, reversing a defense verdict based on the very same reasoning); *Phillip v. ANR Freight Systems, Inc.*, 945 F.2d 1054 (8th Cir. 1991) (reversing a defense verdict in an ADEA case and adopting the same reasoning as *Estes* and *Hawkins*).

In those three seminal cases in the Eighth Circuit, defense verdicts were reversed because evidence of the employers' "past discriminatory policy and practice" was wrongly excluded in pretrial rulings. Each of those cases holds that such evidence should "normally be freely admitted at trial." This oft-cited law has been repeatedly reinforced in the Eighth Circuit — particularly on the danger of blanket evidentiary exclusions. *See Jenson v. Eveleth Taconite*, 130 F.3d 1287, 1298 (8th Cir. 1997): "This Court has cautioned that blanket evidentiary exclusions can be especially

damaging in employment discrimination cases." (citing *Estes* and *Hawkins*); *White v. Honeywell, Inc.*, 141 F.3d 1270, 1276 (8th Cir. 1998): "We have long held that evidence of prior acts of discrimination is relevant to an employer's motive even where it is not extensive enough to establish discriminatory animus by itself." (citing *Estes* and reversing a defense verdict).

In *Parrish v. Immanuel Medical Center*, 92 F.3d 727, 733 (8th Cir. 1996), the Court cites *Hawkins* in approving testimony by another employee "that she had been told to retire." Again, "Where the plaintiff faces the difficult task of establishing an employer's motive, such evidence "provides valuable circumstantial proof of an atmosphere of age bias and an employer's unlawful intent." *Id.*

The Court's *in limine* ruling gave an unfair advantage that tipped the scales for the defendant. The jury properly learned that PCS had the RIF. That's fine, it was part and parcel of the circumstances. The jury heard that Ellen Mendelsohn had years of positive ratings, only to be victimized by a "secret" forced ranking that took place in executive succession planning exercises before the RIF. The jury would have heard a *very similar* story from Bonnie Hoopes. As mentioned, Ms. Hoopes' ratings, which had been predominantly "2s" and "3s" until 2001, inexplicably plummeted in the "shadow" ratings to an "S." Bonnie Hoopes had recently been an award winner, yet was terminated and replaced by younger employees because her supervisor said she was "too old." The "Shadow" link of "S" would have caused the jury to "raise an eyebrow" at the remarkable "coincidences" befalling these two older, long-service employees.

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The particularly on point authority for the particular type of evidence plaintiff sought to offer is *Phillip v. ANR Freight Systems, Inc.*, 145 F.2d 1054. In *Phillips*, plaintiff's counsel made an Offer of Proof "[i]ncluding evidence of other age discrimination lawsuits filed against ANR." *Id.* at 1056. Judge Whipple, of the Western District of Missouri, found plaintiff had failed to show the cases were "sufficiently similar to his own case," and thus were "irrelevant and unduly prejudicial." The exact same argument was made by defendant Sprint in its Motion in Limine. After discussing both *Estes* and *Hawkins*, the Eighth Circuit pointedly rejected the discretionary rationales for exclusion:

> In light of our recent decision in *Hawkins v. Hennepin Technical Center*, ... **We must disagree with the district court's exclusion of this important evidence**. (boldface added).

Phillip cites *Estes* and *Hawkins* for the legal rule that, "An employer's background of discrimination is indeed relevant to proving a particular instance of discrimination." *Id.* at 1056. On retrial, the plaintiff introduced a chart summarizing other complaints of age discrimination. *See Phillip II*, 61 F.3d 669 (8th Cir. 1995).

Ryther v. KARE 11, 108 F.3d 832 (8th Cir. *en banc* 1997) is an important *en banc* decision by the Eighth Circuit, which affirms an age discrimination verdict which included the same type of evidence Plaintiff Ellen Mendelsohn sought to introduce herein. In *Ryther*, a single plaintiff case, the district court allowed evidence "that defendants forced other older employees to choose between demotions or early retirement."

Id. at 843, n. 11. The Court continued, in words absolutely consistent with the evidence Ellen Mendelsohn intended to offer: "Several of the older employees were suddenly given poor performance reviews after receiving years of superior ratings." *Id.*[2] Defendants in Ryther unsuccessfully made the same argument against admission that Sprint successfully made in persuading this Court to preclude this important evidence. For reasons endorsed on appeal in *Ryther*, the District Judge held the "other employee" evidence was sufficiently similar to aid the jury (at 843, n. 11):

> **Defendants contend that evidence concerning the older employees was not relevant because they were not on air talent and, therefore, were not similarly situated to Ryther. Although the situation of the older employees and Ryther differ in some respects, the Court finds there were enough similarities to render the evidence relevant and admissible. The Court also concludes that a jury could reasonably find that defendants intentionally built poor performance cases against older employees, including Ryther.** (bold added).

The Court in *Ryther* also quoted a case cited favorably by the Tenth Circuit within the *Greene v. Safeway* decision. That case is *Morgan v. Arkansas Gazette*, 897 F.2d 945 (8th Cir. 1990), where the Eighth Circuit affirmed an ADEA plaintiff's judgment in a case involving evidence received from employees over 40 leaving the Circulation Department

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2. This is the exact same pattern that happened with Ellen Mendelsohn, Bonnie Hoopes, John Hoopes, etc.

and being replaced by younger employees. The Tenth Circuit in *Greene* observed that the Eighth Circuit had referred to the evidence elicited in *Morgan* as providing "one thread of evidence" that led to upholding the age discrimination award. *Greene v. Safeway* quotes *Morgan* as follows:

> This fact is certainly no conclusive evidence of age discrimination in itself, but it is surely the kind of fact which would cause a reasonable trier of fact to raise an eyebrow, and proceed to assess the employer's explanation for this outcome.

Greene, at 98 F.3d 561, quoting *Morgan*, 897 F.2d at 951. The *Ryther* case also quotes *Morgan* as "one thread of evidence," which in itself is not sufficient to prove age discrimination, but taken in the context of the whole case produced evidence of pretext in the context of evidentiary "indications of age-based animus in Ryther's work environment. . . ." *Id.* at 844. The excluded evidence here similarly provided further "threads" that could have made the difference by showing "age based animus" in Ellen Mendelsohn's work environment.

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CONCLUSION

The evidence which plaintiff sought to adduce may have caused the scales of evidence to "preponderate" in her favor. The jury deliberated for a long time, and commented that this was a close case. Nonetheless, the fact that the Court excluded the evidence *in limine* suggests this is a rare case where retrial is necessary. As eloquently stated by the late Judge Richard Arnold in *Estes*:

> A trial court's exclusion of evidence under Fed. R. Evid. 403 is entitled to substantial deference on review. . . . But the Court's exercise of its discretion must not unfairly prevent a party from proving [her] case. In this case, we examine the consequences of the trial court's exclusions with particular care, since the court's determinations of probative value and prejudice were made before trial began, rather than during the development of the plaintiff s case before the jury. . . .
>
> The effects of blanket evidentiary exclusions can be especially damaging in employment discrimination cases, in which plaintiffs must face the difficult task of persuading the fact finder to disbelieve an employer's account of its own motives.

Id. at 1102-03. Plaintiff Mendelsohn again borrows the Eighth Circuit's concluding words to conclude here: "The jury should have been allowed to consider [Mendelsohn's] work force evidence and sort out the parties' conflicting explanations of its significance." For the reasons stated herein, plaintiff respectfully requests a new trial.

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Respectfully submitted,

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APPENDIX X — DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL DATED FEBRUARY 9, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-CV-02429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR NEW TRIAL

I. Introduction

Plaintiff argues that this Court erred when it excluded evidence of alleged discrimination against individuals other than Plaintiff, which allegedly occurred in organizations within Sprint in which Plaintiff was not employed, and which was allegedly committed by people who had no connection to Plaintiff. Plaintiff is wrong. The issue in this case was whether or not Paul Reddick's decision to terminate Plaintiff's employment was motivated by age discrimination. The Tenth Circuit repeatedly has recognized that testimony regarding other acts of discrimination is relevant only if the other acts involve the same decisionmaker whose motivation is at issue in the plaintiff's case.

Accordingly, this Court correctly excluded testimony regarding alleged discrimination by Sprint employees other than Paul Reddick. The few Tenth Circuit cases cited by Plaintiff do not stand for the proposition for which they are cited. Moreover, apparently dissatisfied with the clear law of this Circuit, Plaintiff inexplicably relies mostly on cases from the Eighth Circuit. In fact, Plaintiff's argument would fare no better under Eighth Circuit law than it does under Tenth Circuit law.

II. Argument

A. Standards Governing Motion for New Trial

New trial motions are not regarded with favor and are granted only with great caution. *Law v. National Collegiate Athletic Ass'n*, 85 F.R.D. 324, 326 (D. Kan. 1999). In reviewing a motion for new trial, the court must view the evidence in the light most favorable to the prevailing party. *Id.* Evidentiary rulings are committed the "very broad discretion" of the trial court. *Leidel v. Ameripride Services, Inc.*, 291 F. Supp.2d 1241, 1245 (D. Kan. 2003) (quoting *Webb v. ABF Freight System, Inc.*, 155 F.3d 1230, 1246 (10th Cir. 1998), *cert. denied*, 526 U.S. 1018 (1999)). An evidentiary ruling is an abuse of discretion only if based on "'an erroneous conclusion of law, a clearly erroneous finding of fact, or a manifest error in judgment.'" *Id.*

Moreover, the party seeking to set aside a jury verdict must do more than demonstrate an abuse of discretion. *Leidel*, 291 F. Supp.2d at 1245. The movant must demonstrate trial error which constitutes prejudicial error. *Rahn v. Junction*

City Foundry, Inc., 161 F. Supp.2d 1219, 1227 (D. Kan. 2001) (citing *White v. Conoco, Inc.*, 710 F.2d 1442, 1443 (10th Cir. 1983)). "The Court should exercise judgment in preference to the automatic reversal for 'error' and ignore errors that do not affect the essential fairness of the trial." *Id.* (quoting *McDonough Power Equip., Inc., v. Greenwood*, 464 U.S. 548, 553 (1984)). No error in the exclusion of evidence can be grounds for granting a new trial unless the error affects the substantial rights of the parties. *Wirtz v. Kansas Farm Bureau Services, Inc.*, 311 F. Supp.2d 1197, 1226 (D. Kan. 2004); Fed. R. Civ. P. 61.

B. Acts of Discrimination Unrelated To The Decisionmaker Are Inadmissible

The Court's decision to exclude the proffered evidence in this case was not error at all, much less prejudicial error.

The issue in this case was whether Paul Reddick made his decision to terminate Plaintiff because of her age. Only evidence relevant to that issue could be admissible. Fed. R. Evid. 402. Accordingly, the Court correctly excluded the proffered evidence because that evidence, unrelated to Mr. Reddick's alleged age-discriminatory motive, could not be relevant to the issue being tried.[1]

The Tenth Circuit has recognized this principle repeatedly. In *Schneider v. City and County of Denver*, No. 01-119[illegible], 2002 WL 1938583 (10th Cir. Aug. 22, 2002),

1. Defendant's Motion in Limine and supporting memorandum (Docket Doc. #s 78 and 79) also set forth that the proffered evidence would have been properly excludable under Fed. R. Evid. 403.

the Court held that, in order to introduce evidence of other discriminatory acts, ". . . the plaintiff must show the circumstances involving the other employees are such that their statements can 'logically or reasonably be tied to the decision to terminate plaintiff.'" (quoting *Curtis v. Oklahoma City Public Schools Bd. of Education*, 147 F.3d 1200, 1217 (10th Cir. 1998)). The *Schneider* Court also cited with approval the opinion in *Schrand v. Federal Pac. Elec. Co.*, 851 F.2d 152, 156 (6th Cir. 1988). The *Schrand* Court reversed a plaintiff's jury verdict, finding that the trial court's admission of other employees' testimony that they had been discriminated against by defendant was erroneous because the person who made the decision to terminate Mr. Schrand was not involved in the decisions to terminate the other employees. 851 F.2d at 156.

The principle that other alleged acts of discrimination can be relevant only if committed by the same decisionmaker at issue in the litigation is particularly demonstrated by the Tenth Circuit's decision in *Simms v. State of Oklahoma*, 165 F.3d 1321 (10th Cir. 1999), *cert. denied*, 528 U.S. 815 (1999). In that case, the Tenth Circuit was faced with evidence that the same plaintiff had earlier been discriminated against by different decisionmakers employed by defendant. Despite the fact that the prior litigated discrimination involved the same plaintiff and defendant, the Tenth Circuit held that such prior discrimination was not evidence of pretext in Mr. Simms's current litigation because it involved different decisionmakers. *Id.* at 1330. "Such a conclusive assertion is not probative of pretext unless the prior incidences of alleged discrimination can somehow be tied to the employment actions disputed in the case at hand. . . . Mr. Simms fails to

establish such a connection, for he does not link any of the parties involved in the current employment action . . . to the employment actions that were the subject of the Simms I litigation". *Id.* (citations omitted).

Similarly, in *Heno v. Sprint/United Management Co.*, 208 F.3d 847 (10th Cir. 2000), the Tenth Circuit repeated its earlier admonition that "'. . . anecdotal evidence of discrimination should only be admitted if 'the prior incidences of alleged discrimination can somehow be tied to the employment actions disputed in the case at hand.'" *Id.* at 856 (quoting *Simms*, 165 F.3d at 1330). The *Heno* Court specifically held that "Plaintiff can meet this requirement by showing that the same supervisors were involved in prior discriminatory employment actions." 208 F.3d at 856.

In *Curtis v. Oklahoma City Public Schools Board of Education*, 147 F.3d 1200 (10th Cir. 1998), the Tenth Circuit reviewed the trial court's exclusion of testimony by other employees that they had been discriminated against by defendant. In affirming the evidentiary exclusions, the Tenth Circuit stated, "For such testimony to be relevant, however, the plaintiff must show the circumstances involving the other employees are such that their statements can "logically or reasonably be tied to the decision to terminate the plaintiff". *Id.* at 1217. The Tenth Circuit found that the testimony was properly excluded where, as here, it regarded an employee who worked in a different department than plaintiff, under a different supervisor. *Id.* at 1218.

Thus, the Tenth Circuit has made itself quite clear regarding the sole issue raised by Plaintiff, and determined

that issue squarely against her. Plaintiff's few citations to Tenth Circuit cases do nothing to bolster her Motion. In *Spulak v. K Mart Corp.*, 894 F.2d 1150 (10th Cir. 1990), a case cited by Plaintiff because another employee with a different manager was allowed to testify, Plaintiff ignores the fact that the Court explained its decision by observing that the other employee's manager had specifically referred to the plaintiff's early retirement as being "at K Mart's request" when encouraging the other employee to also consider retirement. *Id.* at 1156, n. 2. Indeed, the *Spulak* Court felt compelled to distinguish the *Schrand* case, *see supra*, on these very grounds. Plaintiff's reliance on *Greene v. Safeway Stores, Inc.*, 98 F.3d 554 (10th Cir. 1996), suffers from the same flaw. In that case, Plaintiff was terminated by the CEO. The other high-level executives permitted to testify had all also been replaced by younger individuals within months after the same CEO had assumed his new office. In *Bingman v. Natkin & Co.*, 937 F.2d 553 (10th Cir. 1991), another case cited by Plaintiff, there is not even any discussion as to who the relevant decisionmaker was. In *James v. Sears, Roebuck and Co.*, 21 F.3d 989, (10th Cir. 1994), there is no discussion whatsoever about the admissibility of evidence regarding acts of discrimination other than those being litigated. Although Plaintiff has omitted discussion of *Minshall v. McGraw Hill Broadcasting Co., Inc.*, 323 F.3d 1273 (10th Cir. 2003) in her Suggestions in Support, she did attempt to use that case to oppose Defendant's Motion in Limine on the same issue. As Plaintiff apparently now realizes, the *Minshall* case actually supports Defendant's position. In *Minshall*, the Court explicitly approved the admission of testimony by other employees about their own alleged experience of age discrimination

precisely because those employees were supervised and/or demoted by the exact same individual who recommended the termination of Mr. Minshall. *Id.* at 1285-1286.

In other words, based on Tenth Circuit law, this Court properly excluded the proffered testimony regarding alleged discrimination against other employees because none of it involved Mr. Reddick. None of the proffered witnesses reported to Mr. Reddick or were in his chain of command.[2] None of the proffered testimony attempted to connect Mr. Reddick to the alleged discriminatory acts. In fact, none of the proffered testimony even mentioned Mr. Reddick's name.

Plaintiff's resort to Eighth Circuit law also does not advance her case. First, particularly given the clarity of Tenth Circuit law regarding the legal issue in dispute, this Court need not look to the Eighth Circuit at all for the applicable law. Second, an examination of Eighth Circuit law makes clear that it too would approve the exclusion of the proffered evidence.

Although Plaintiff has repeatedly quoted the Eighth Circuit for general propositions about the use of "blanket exclusions" and "background evidence," Plaintiff has ignored the fact that, with regard to the specific issue at hand, the Eighth Circuit has repeatedly ruled in favor of Defendant's position. In *Kline v. City of Kansas City Fire Department*, 175 F.3d 660 (8th Cir. 1999), *cert. denied*, 528 U.S. 1155

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2. Defendant hereby incorporates its Memorandum in Opposition to Plaintiff's Offer of Proof Regarding Similarly Situated Employees Terminated as Part of a Reduction in Force, and the exhibits thereto, filed January 12, 2005. (Docket Doc. No. 121).

(2000), four female employees of the Kansas City Fire Department alleged various forms of discrimination. The trial court, *in limine*, excluded the plaintiffs' proposed evidence regarding discrimination against other female employees by supervisors uninvolved in the discrimination against plaintiffs. *Id.* at 664, 668. The Eighth Circuit specifically affirmed that ruling:

> We agree with the trial court that the acts of people who did not supervise or allegedly discriminate against the plaintiffs (and who in most cases did not even work in the same area as plaintiffs) are not probative of the city's motive, opportunity, intent, or knowledge. What little probative value such evidence might have, in any case, would be substantially outweighed by the threat of confusion of the issues and unfair prejudice.

Id. at 668 (parenthetical in original).

Thus, the Eighth Circuit, like the Tenth, excludes evidence regarding discrimination unrelated to the plaintiff's decisionmaker. Indeed, although Plaintiff relies extensively in her Suggestions in Support on the Eighth Circuit's opinion in *Estes v. Dick Smith Ford, Inc.*, 856 F.2d 1097 (8th Cir. 1988), and its progeny, Plaintiff fails to mention the most relevant portion of that opinion. The relevant issue in that employment race discrimination case was the trial court's evidentiary exclusion of prior acts of discrimination against black customers. The *Estes* Court explained its reversal of the trial court:

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> Ford argues that the treatment of black customers is sufficiently distinguishable from the treatment of black employees that evidence of Ford's discrimination against customers may not be probative. This argument might have merit if the Ford employees allegedly responsible for the discrimination against customers were unconnected with the employees who allegedly fired Estes. . . . Here, however, Estes alleged that the discrimination against black customers occurred in his own Service Department, and Estes alleged that the manager of the Service Department who authorized this practice also played a role in the decision to fire Estes.

Id. at 1104. In other words, according to the Eighth Circuit, the evidence was probative because it involved the same decisionmaker.

The Eighth Circuit applied *Estes* just that way in *Callanan v. Runyun*, 75 F.3d 1293 (8th Cir. 1996). In *Callanan*, the Eighth Circuit affirmed excluding testimony from other employees regarding discrimination at plaintiff's workplace, in part, because "to the extent that the testimony did identify discrete acts of discrimination, the witnesses did not complain that Callanan's own supervisors had engaged in any behavior that we could correctly characterize as improper". *Id.* at 1298. In support of that ruling, the *Callanan* Court explicitly distinguished its "admonitions in previous opinions" (regarding blanket exclusions and background evidence) by pointing to *Estes*. *Id.* After citing *Estes* regarding the potential dangers of blanket exclusions, the *Callanan*

Court also described *Estes* as "mentioning that evidence of an employer's past discriminatory acts may not be probative where the employees involved in the improper activity were unconnected with the employees who discriminated against the complainant". *Id.* In other words, although *Estes* stands for the proposition that background evidence can be relevant in some circumstances, it also stands for the proposition that background evidence is not relevant where the employees involved in the background discrimination are not the same employees involved in the discrimination at issue. Accordingly, the *Callanan* Court found that Ms. Callanan's witnesses' proffered background evidence was not relevant because it did not involve discrimination by the individuals alleged to have discriminated against her. *Id.*

Thus, Plaintiff's attempt to ignore the law of the Tenth Circuit is to no avail. Like the applicable law of the Tenth Circuit, the Eighth Circuit also would exclude testimony unrelated to the plaintiff's decisionmaker.

In any event, it is the law of the Tenth Circuit that applies in this case. That law makes clear that the Court correctly excluded Plaintiff's proffered evidence regarding discrimination not involving Paul Reddick.

III. Conclusion

For all the foregoing reasons, Plaintiff's Motion for New Trial should be denied.

Respectfully submitted,

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APPENDIX Y — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS OVERRULING THE MOTION FOR A NEW TRIAL DATED FEBRUARY 28, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT COMPANY

Defendant.

ORDER

Ellen J. Mendelsohn brought this age discrimination claim against Sprint/United Management Company ("Sprint") under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq*. On January 4 through January 7 and January 10 through January 13, 2005, plaintiff tried her claim to a jury. The jury rendered a verdict for defendant. This matter comes before the Court on plaintiff's *Motion For A New Trial* (Doc. #131) filed January 28, 2005.

Plaintiff asserts that the Court erred in excluding testimony of satisfactorily performing, long-term older employees whom defendant terminated. The Court ruled that such employees could testify only if Paul Reddick supervised

them. The Court finds that plaintiff is not entitled to a new trial. None of the proferred evidence makes it more likely that the decision makers in this case discriminated against plaintiff. Further, plaintiff inexplicably asserts that the jury commented that this was "a close case." *See Suggestions In Support Of Plaintiff's Motion For New Trial* (Doc. #132) at 10. In fact, the jurors stated that while counsel had presented plaintiff's evidence in the best possible light, this was not a close case because plaintiff presented no persuasive evidence of age discrimination.

IT IS THEREFORE ORDERED that plaintiff's *Motion For A New Trial* (Doc. #131) filed January 28, 2005 be and hereby is **OVERRULED**.

Dated this 28th day of February, 2005 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge

APPENDIX Z — PRETRIAL HEARING STATUS CONFERENCE DATED JANUARY 29, 2007

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Case No. 03-2429-KHV

ELLEN J. MENDELSOHN,

Plaintiff,

vs.

SPRINT/UNITED MANAGEMENT COMPANY,

Defendant.

January 29, 2007

STATUS CONFERENCE

* * *

[3] (Whereupon, the following proceedings were had in chambers with all parties being present:)

THE COURT: Okay. Well, you all tell me what you want to talk about. We — as you know, we have the case set for trial on the 6th of February and you're the only case that we have. And it's going to be a very long time before that happens again. I know that you all are interested in filing an application — or I guess you did file an application for a writ of certiorari.

MS. MILLER: We filed a petition for rehearing and that was — we lost that 7 to 5 in the Tenth Circuit, so we're working for a petition for cert which we think we'll be able to file in the next two to three weeks. And we think it's a case that actually has the shot since the Circuits are definitely split.

THE COURT: On what?

MS. MILLER: On the issue of whether this other employee evidence is admissible in these types of cases.

MS. MILLER: So I know there are four other circuits that agree with you in your ruling and we agree with you in your ruling, obviously, and we'd like to keep it. So we've talked to [4] plaintiff's counsel and I think we'd really like to let our suspicion to run its course because obviously we don't want to take up a jury's time if there's a possibility the Supreme Court cert reverses and I think plaintiff agrees.

MR. EGAN: This is one of the few times we are actually in total agreement. Just for the fact of trying to be common sense about it, I kind of don't relish the idea of stretching it out and yet I do know it will take a while. I don't know what the chances are on cert, I really don't. We know that the odds are against it. But insofar as trying to do the practical thing as we sit here a week before the scheduled trial, it makes sense to us, and I've already asked the client what she thinks about it. If they don't get it, we actually have surprise of surprises. We've actually made a settlement demand and I think that I've tried to think whether or not it makes sense to have that go along until they get their appeal and their options

run out. It doesn't seem to — I mean, I've tried to think that out and didn't seem like that would run — that it would run counter to what they were talking about.

So I did tell Jim and Christine that under [5] the circumstances, we would not oppose a reasonable stay to see whether we are, once again, done with this thing.

THE COURT: Okay. Well, let's talk about the other things on the agenda because I'm disinclined to stay it. But tell me, I know that counsel raised other issues about witness lists and so forth. So let's talk about somebody on your side, maybe both sides, wrote a letter saying you had concerns about evidence at trial and witnesses and so forth.

MS. MILLER: Well, I know one of the issues, Judge, we thought might need to be addressed is that perhaps the deadlines should be set or plaintiffs should be required to update interrogatory responses and that sort of thing because we don't know what she's been doing the last couple years, what she's been doing or trying to work on, what's on that front. I don't know that there is, in having reviewed it, a particular need to reopen the exhibit lists and all that sort of thing.

It seems to me an offer of proof was made, you know, the last time and I assume we would still be dealing with the same witnesses that were [6] identified. And once that were opened up, a lot of the supervisors of these people, given the time, are no longer with the company.

THE COURT: Are they old and got RIF'd?

MS. MILLER: They're dead they're so old.

MR. EGAN: You finally get the picture.

MR. STREEN: I think they actually — at least one of the witnesses was RIF'd subsequently.

THE COURT: I know there's been a lot of stuff like that out there. I think there's reports they are still in the process of doing RIFs out there like —

MS. MILLER: I think they have had —

MR. EGAN: They just announced some others. They had not for some time.

MR. MONAFO: Ask Dennis why ask us?

MR. EGAN: I just read the papers.

THE COURT: Are you in agreement nobody feels like they need to revise their witness list and that sort of thing?

MR EGAN: No. I think maybe we do. I think that's an open question. What I wonder is, for instance, there will be room to say that under the ruling that we would get to put on, and we do have one of the our witnesses who we think we need, [7] if Carolyn Selberg(ph) was named if she was one of the five, because we have had a death. Are we able to use — are we stuck with using the same people that were identified in the first trial?

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THE COURT: Why would you have more than?

MR. MEYERS: Primarily, rediscovery of the witness case which you're aware of. We've had some two years' worth of discovery from the plaintiff's perspective, some 150 or so witnesses have been deposed, some even closer to location to this, you know, business unit, than some of the people that were previously identified and there's really a wealth of information that's available to both sides since counsel sitting on both cases, that was not available really, probably in fairness to either side, counsel at the time of the last trial.

THE COURT: Why was it not available at the time of the last trial?

MR. EGAN: Just hadn't done the discovery. We've been two years — two years, remember we tried it in January of 2005 and the discovery that's come up in the Williams case has actually been since that time during the year 2005 and the end of 2006. So it was just not — not knowing, not developed, and not memorialized in testimony as [8] it is now.

MS. MILLER: Well, that opens up a whole new can of worms, then. Obviously, I mean, I don't think when a case is, did you make an offer of proof and the Court says, yeah, okay, those people should be allowed to testify, that necessarily opens the door to anybody, whoever and whenever, and obviously if that's the case, then discovery would need to be completely reopened. None of this has been done in this case. And, you know, we might have to take a completely different tact depending on obviously who they name.

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THE COURT: It doesn't seem to me that when the Tenth Circuit remanded this case for further proceedings consistent with the Court, they issued — they were contemplating that we would reopen discovery and start the whole thing all over again. So the way I would read the order is that, you know, we're talking about, I think, were there four or five individuals who were identified that were discussing the Tenth Circuit order and those would be the universe of people we're talking about and I wouldn't see any need for reason to reopen discovery. And, as you know, when this case is four years old, so it seems to me it's in [9] everybody's best interests to get it wrapped up and put to bed. Is that your only issue with regard to witnesses?

MR EGAN: Well, no. Obviously, they would be calling some folks, I guess, in response to the witnesses that we would call and I guess I'd want to know something about who would be called by them.

MR. MONAFO: I think that's going — one of the problems is Dennis has been tied up in arbitration until the — literally until one o'clock today, so we haven't had a chance to talk about that recently. We did talk about that possibility, but listening to what the Judge is saying about, you know, just the order from the Tenth Circuit wasn't a reopening of all discovery, I don't know that we would do that. Because, obviously, if we did that, then they would want to do something and, you know, either I guess the door is open or it's not open.

THE COURT: Okay. So you're not thinking that you want to designate additional witnesses either.

MR. MONAFO: I'm looking at that, there's nobody really that we would — that, you know, it [10] would cause — if we tried to do that, it would just cause —

THE COURT: Okay. What else?

MR. EGAN: That would be it as far as discovery, frankly.

THE COURT: Okay. Well, I mean, I guess the question that I have, can we just roll back the clock and just leave the witness designations like they were, the exhibit lists like they were, and just put ourselves back in the status quo the way we were before we picked a jury the first time around and take it from there? Does anybody see any reason to do something different?

MR. EGAN: No. No. I don't, Your Honor.

I don't know. Coming into today, you know, we did not have any certainty — I guess what I would ask if we are number 1 on February 6th, I thought maybe you had another docket — a docket going that week. Is it possible -- because we're set to produce some experts in the other case, is it possible to go a couple weeks down so we can make sure we got our witnesses, we got everybody?

THE COURT: Huh-uh.

MR. EGAN: Can't do it?

THE COURT: Uh-huh.

[11] We could go months and months down, but that's what I'm trying to avoid because that's why I had Linda, you know, whenever we thought we were hearing something about the Tenth Circuit, I wanted to give you guys as much advance notice as we could and I thought the opinion might be coming down sooner than it did, but because of the rehearing and so forth, that delayed it. And I don't want to postpone this until the fall.

And in looking through the trial calendar, you know, it basically looks like we have this window of opportunity, it's not even a perfect opportunity, but do you still think it's going to be about what — I mean, what amount of time do you think it's going to be? I assume if you're doing all these additional witnesses, then we could be looking at a trial which is ten times as long, five times as long? I mean, it could be quite a bit longer depending on how much —

MR. EGAN: How could it be that?

THE COURT: Well, it depends on how much detail they want to get into and what these additional witnesses say and how much they want to go into detail refuting whatever their testimony is.

[12] MR. EGAN: I want to make sure that we understand. We would — the way I'm understanding what you would say is we would produce — try to get the five witnesses who were identified last time. The defendant has not identified any witnesses in response to them, has not identified any documents, so I would not think that we would — and we've just heard that they're not going to do so. So I

think that what we're talking about is we put on the five witnesses, they cross-examine with whatever they cross-examine with that's not additional documents, and so I think that it's within close to, I suppose, the same time frame that we had last time, nine days, ten days. I think we had eight trial days last time.

THE COURT: I think it was seven or eight.

MS. MILLER: But we had, what, nine or ten witnesses? And —

THE COURT: So you're saying none of the witnesses they've designated would be designated to refute the testimony of these witnesses. I'd have to pull out the list and look —

MR. EGAN: Yes, Your Honor.

THE COURT: I'd have to pull out the list and look. What was the timing of the motion in [13] limine? Was that before the witness designations were done or after?

MR. EGAN: Long after.

THE COURT: That's what I assume. Well, then, I mean if that's the case, then I suppose you could put those witnesses on and it would just be a question of the additional time it takes to cover those witnesses and do their cross-examination.

MR. MONAFO: So maybe ten days if trial — if it was eight last time.

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THE COURT: The reason I'm not inclined — the Tenth Circuit turned down your request to recall the mandate, right?

MS. MILLER: Right. I guess there's a panel and then there's a circuit justice or something like that. The panel voted to want to turn down.

THE COURT: It's not really clear to me what issue you would plan to seek cert on, but just, you know, from my review of the Tenth Circuit opinion, it looks like the way they threw this up was basically as an evidentiary issue and that isn't something that the Supreme Court has been real interested in. I read an article recently which was speculating as to why the incidence of [14] accepted cert petitions is down so low because it's like one of the historic low levels, I think, and the speculation is that because the Court is so evenly divided, both sides are wary of taking cert on an issue that they feel is important because they're afraid they don't have the votes to get their side to prevail and they would rather have a split in the circuits than to have authoritative Supreme Court cases on the wrong side of the issue. And for that — but also just because I don't see anything that — in this case that raises a substantial possibility that a petition for cert would be granted and, you know, I realize that you've got the right to file it, but I think that the chances are slim and none that it would be granted, and so it doesn't make any sense to me for us to delay before that eventuality.

And especially when you look at the age of the case, the public interest in the just and speedy and efficient resolution of cases and this is definitely at the top of our radar screen now. So at least that's my thought on that. It sounds like

there's not much to do except just roll out the same exhibits and things that we had before, right?

[15] MR. MONAFO: Dust them off.

THE COURT: Have you all — you said there is a settlement proposal out there?

MS. MILLER: Yes, Your Honor.

THE COURT: Do you guys — I really don't think that either one of you needs mediation or some kind of formal ADR, but I'll throw this out there.

MS. MILLER: I think the problem is, and I think generally with Dennis too, the client would like to exhaust their appeal rights and so they are interested in talking about a conditional settlement, not in this case per se, but that ruling, that's a problem, but obviously if we're trying next week, we can't really do a conditional. I mean, we can, but if the Supreme Court doesn't grant cert, we'll settle for X, I don't know if that's satisfactory to you.

MR. MONAFO: Judge, what would your feelings be on that if we were able to reach a settlement but it was conditioned upon our cert being denied? So if cert were —

MS. MILLER: The client doesn't want to give up their appeal right, which obviously if they settled, there's no controversy.

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[16] THE COURT: You know what? I would roll the dice and I would gamble ten days, of my standpoint, of trial time on cert being denied because basically that's what we're talking about. What do you think?

MR EGAN: Well, Your Honor, I think if they offered a settlement, we could settle the case. I mean, that's what I think would happen if they're interested in obtaining that.

MR. MONAFO: And the condition would just be you have to wait a couple — we would put the money in escrow or something and as soon as the denial came in, you get the money.

THE COURT: I mean, I went back and checked just to see like on the cases that I've been involved with what the delay is between filing a petition and the action on this petition, and it's looks to me like they must have a screening process that gets rid of frivolous ones within 30 days because I think the longest I've ever seen is like five months.

MR. MONAFO: I've heard that too.

MR. EGAN: Jim, if you guys would get a response and if it's enough, then we might recommend that because then that dispenses with the [17] case. And if you're successful on cert, well, more power to you, but I think it makes sense. But I think it's something where you'd have to get at it pretty quickly.

MR. MONAFO: I — you've been unavailable —

MR. MEYERS: Judge, that makes sense because you don't have to try the case.

MR. MONAFO: But if cert were granted and we went to the Supreme Court and we lost and they remand it had back to trial and .005 —

MS. MILLER: There is a small chance.

THE COURT: And I'll be the first one to say, hats off to you for good briefing if you can like convince the Supreme Court that this is the kind of case that they want to get involved in, but it just — it doesn't fit my paradigm of what I think is likely to happen, but, I mean, be an interesting experience doing it anyway, so.

MR. EGAN: Your Honor, what is your reaction if they would offer enough that we would say we could — you have done some kind of conditional things before, haven't you, or not?

THE COURT: Well, never exactly like this. I can't really think of a — I think the only kinds [18] of conditional things that have been proposed to me have been like in the middle of an employment case and maybe I think that this was a Sprint case, it was because you wanted to settle in the —

MR. EGAN: Definitely was something like that.

THE COURT: — middle and there was some issue about the wait time and I think it was resolved about having the plaintiff indemnify Sprint if she decided to accept the settlement agreement.

MR. EGAN: I don't recall those details, but I recall that they made sure there was a definite agreement so whatever the condition was, it was not a broad condition. It was something that would be met and it was met by Sprint so we took care of it.

THE COURT: So what would the proposal be exactly, that you would settle but it would be conditioned on —

MS. MILLER: We would agree to pay if, and only if, cert is denied.

MR. EGAN: At least that's a full final resolution of the case if that would happen, I mean, I really believe if that would happen and it [19] would be in a number agreed on by parties, I think it would be off the Court — it would go away. I'm with you that I think the chances of cert are one of those small, small percentages.

MR. MONAFO: So we all agree on that. We understand what we're up against.

MR. EGAN: I don't mean to beat that horse, it's just that, at least, that does have the possible promise of —

MS. MILLER: Ending it.

MR. MEYERS: The condition doesn't sound like an ambiguous one. It's an up or down we need to know whether the condition is met or not.

THE COURT: So if there's not a question of her having to repay the money.

MS. MILLER: No. We would just pay it if and when cert is denied.

MR. MONAFO: So it could be 30 days, you know.

MR. STREEN: I assume that means if cert is granted, but the outcome is the same, the case is settled.

MS. MILLER: Cert is granted — we've gone there with our client, but we'd certainly talk to them about it.

[20] MR. STREEN: That way we know we're done. Either you get cert, you pay money; you win on cert and we're done. Or you get cert but you lose the case.

MS. MILLER: There is one — there is a possibility that they tweak it or something is the only problem. But I agree with you, if they took cert and then affirmed the Tenth Circuit in full then probably the settlement should still apply. We'll talk to our client.

MR. STREEN: That way we all know the case is put to bed.

THE COURT: Let me ask, so the way you're imagining, the outcome of the cert petition would not have any effect on the settlement?

MR. STREEN: No. Either they win or lose. If they get a reversal, we're done because your verdict would be reinstated. If they don't get a reversal, then the settlement.

THE COURT: So what I think is the best — the best outcome you could hope for in the Supreme Court would be that the — well, no, the best outcome would be just to reinstate the verdict here, but another outcome would be to do what the sentence suggested which is to say it was error to [21] exclude those five witnesses and I should have done a better job of explaining what I was doing and why which is true and they could remand it for a new trial with better findings and explanations and rulings on the evidentiary issue. So I mean, I could see a scenario where we would not be done. And so then the question —

MS. MILLER: And they could even, I think, remand it for further clarification on why these people were, you know, they could do that too. They wouldn't have to order a whole new trial.

THE COURT: Now one thing I would just throw out there is after listening to all the evidence and considering the proffers and so forth at the time of the trial, it was my view that testimony would not have affected the outcome of the case in any way, you know, just having considered plaintiff was on the witness stand for a long time, we heard a lot from her, we heard a lot from the Sprint witnesses, and I visited with the jury afterwards and they did not believe that this was a close case.

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And so one thing you might consider is trying to structure a settlement that would give Sprint the right to pursue its petition for cert, [22] but disposes of this case, you know, for good or bad no matter what at the end of the day. And maybe you could have one price if certificate's denied and another if certificate's granted.

MS. MILLER: I don't know about that.

The only thing they are concerned about is effectuating any sort of settlement before we pull ourselves out of the game and the client doesn't want that.

THE COURT: Obviously, we can't have a conclusive settlement where which would take the ripeness and case in controversy out of the situation. But in my heart of hearts, I really don't think that this had any evidence — any effect at all on the outcome of the trial. And so I don't know. For whatever that's worth, you might think about ways to structure if you're going to settle so that there's — doesn't have to be another trial.

MR. STREEN: I guess the key question is how soon we can get this communication started and ended because —

MR. MONAFO: Today.

MR. STREEN: — the trial is rather imminent.

[23] THE COURT: Is your mediation done now? Was that —

MR. MONAFO: No.

MR. EGAN: No. I'm finished. I finished today.

THE COURT: Do you guys want to — I have to go at three o'clock anyway. Do you want a conference room where you can sit down and carry on this conversation?

MR. MONAFO: Yeah. We have half-hour, so.

THE COURT: Okay.

MS. MILLER: Unless you want to talk to us longer.

THE COURT: Okay. Well, good luck.

APPENDIX AA — FEDERAL RULE OF EVIDENCE 404(b)

Federal Rules of Evidence Rule 404(b), 28 U.S.C.A.
UNITED STATES CODE ANNOTATED
RULES OF EVIDENCE FOR UNITED STATES COURTS AND MAGISTRATES
ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

* * *

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.